SUPREME COURT OF THE UNITED STATES.

No. 372.

BENJAMIN STARK, PLAINTIFF IN ERROR,

vs.

ADDISON M. STARR AND LEWIS M. STARR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

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5 STATE OF OREGON, *Multnomah county, ss:*

Be it remembered that on the 13th day of January, 1864, the plaintiff in the cause hereinafter entitled, by his attorney, W. W. Chapman, filed in the office of the clerk of the circuit court of said State for said county, the following bill of complaint in said cause, summons, and affidavit, for publication, which read as follows, to wit:

In the circuit court of the State of Oregon for Multnomah county, in equity.

ADDISON M. and LEWIS M. STARR, pl'ffs,
vs.
BENJAMIN STARK, defendant.

[U. S. revenue stamp, 50 cts.]

The plaintiffs represent to the court that they are the the owners and in possession of lots Nos. one (1,) two (2,) and four (4,) in block No. eighty-one (81,) in the city of Portland, Multnomah county, Oregon, as known and designated on the map of said city, and that they and those under whom they claim have been in the peaceable possession thereof since the 13th day of December, 1849, and have made large and valuable improvements thereon, of which the said defendant has at all times had notice; that the said defendant claims the title thereto adverse to the plaintiffs, and threatens them with suit to obtain the possession thereof.

The plaintiffs therefore pray that the defendant may be compelled to set out by what title he claims said property, and that the
6 rights therein of the plaintiff and defendant may be determined by this court.

The plaintiffs, further complaining, show to the court that from the 13th day of December, 1849, till about the 20th of March, 1850, S. Coffin, D. H. Lownsdale, now deceased, and W. W. Chapman were claimants jointly and settlers, and in possession of what was known as the Portland land claim; that during the time they were so in possession of said claim they laid off and sold many lots and blocks in said city;* that on the 20th day of March, 1850, the said Coffin, Lownsdale, and Chapman by deed of that date sold and conveyed and delivered the possession of said Chapman for a valuable consideration block eighty-one (81,) as known and designated upon the map of said city, as will more fully appear on reference to copy of said deed herewith filed, marked A, and made a part of this bill; and that said Chapman and his grantees on down to the plaintiffs have been in the uninterrupted and peaceable possession of said lots ever since the execution of said conveyance, of which the said defendant had knowledge and information.

The said plaintiffs further show that the said Daniel being in San Francisco, California, on the 1st day of March, 1850, entered into a certain written agreement with the said defendant, Benjamin Stark, then a resident there, respecting the release to said Stark of a cer-

tain part of said claim, subject to the ratification of the same
7 by said Coffin and Chapman; that by the terms of said written agreement and subsequent amendments thereto lawfully made the said defendant Stark, for a valuable consideration, became bound to ratify and confirm all sales and conveyances of such lots as aforesaid prior to the 13th day of April, 1850, which terms and conditions of said agreement and subsequent amendments thereto will more fully and at large appear on reference thereto, a copy whereof is herewith filed, marked B, and made a part of this bill; that the said defendant, Benjamin Stark, accepted of said release, and entered into the possession of the tract of land so released; that the said block No. 81 was and is included within the said tract of land so released, and was one of the blocks the sales of which were confirmed as aforesaid, of which the said defendant had notice.

The plaintiffs further show that by a regular chain of title from the said W. W. Chapman to the said plaintiffs they are the owners and in possession of the said lots Nos. one (1,) two (2,) and four (4,) in said block No. 81, in said city. The said Benjamin Stark claims to have received title from the United States for said tract so released, embracing said block; that said Benjamin Stark not only neglects and refuses to release and confirm said lots to the plaintiffs, but, which as they are informed and believe, he has declared he will never do, and has departed from the jurisdiction of this court, and does not now reside within the same.

8 The plaintiffs therefore pray that the defendant may be compelled to answer the matters and things herein stated, and the premises considered that he be compelled to release to the plaintiffs all his right, title, interest, and claim in and to the said property.

And the plaintiffs, as in duty bound, will ever pray, &c.

CHAPMAN, *Att'y.*

STATE OF OREGON, *Multnomah county, ss:*

Be it remembered that on this 12th day of January, A. D. 1864, the above-named Louis M. Starr, one of the before-named plaintiffs, personally appeared before me, the undersigned, and made oath that the allegations in the foregoing bill so far as stated from the knowledge of the plaintiffs are true, and those stated from information he believes to be true.

L. M. STARR.

Subscribed and sworn to before me this 12th day of January, 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

Summons.

In the circuit court of the State of Oregon for Multnomah county, in equity.

ADDISON M. and LEWIS M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant.

To the defendant in the above-entitled suit:

9 You are hereby notified to appear in the said court and answer the complaint in said suit, or judgment for want thereof will be taken against you, and the plaintiffs will apply to the court for the relief demanded therein.

Dated at Portland this 13th day of January, A. D. 1864.

W. W. CHAPMAN, *Att'y for Pl'ffs.*

Sheriff's return.

STATE OF OREGON, *Multnomah county, ss:*

I certify that the within named defendant cannot be found within my county. Fees, 45.

Jan'y 12th, 1864. R. J. LADD, *Sheriff.*

Affidavit.

STATE OF OREGON, *Multnomah county, ss:*

In the circuit court for said county, in equity.

A. M. and L. M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant.

Lewis M. Starr, one of the above-named pl'ffs, being sworn, saith that after due dilligence the said Benjamin Stark cannot be found within the State; and that the above-entitled suit, in which the plaintiffs have a good cause of action, relates to real property within this State; and that, as the pl'ffs are informed and believe, the said defendant resides in New London, Connecticut, and is a proper party to said suit, that said defendant is not now a resident of this State, as they are informed, but has property therein.

L. M. STARR.

10 Subscribed and sworn to before me this 13th day of Jan'y, 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

[U. S. revenue stamp, 5 cts.]

Order.

On which affidavit is the following indorsement, to wit:

STATE OF OREGON, *County of Multnomah, ss:*

Upon the within affidavit it is ordered that service of the summons in this suit be made by publication thereof in the Weekly Oregonian, a newspaper published in this county, for twelve consecutive weeks, and that copy of the complaint and summons be forthwith deposited in the post office, postage prepaid, directed to the defendant, Benjamine Stark, at his residence specified in the within affidavit.

Done at chambers, in Portland, this 13th day of January, 1864.

(Signed) ERASMUS D. SHATTUCK
Judge of Circ. Court.

And afterwards, at a term of the circuit court of the State of Oregon for the county of Multnomah, begun and held at the court-house, in the city of Porland, in said county, on Mouday, the 8th day of February, 1864, before the Hon. Erasmus D. Shattuck, sole judge of said court, to wit, on the 10th day of said month of February, it being the 3d judicial day of said term, the following order was made by the said court in the said above-entitled cause, to wit:

Now come the plaintiffs, by W. W. Chapman, their attor-
11 ney, and on motion this cause is continued for service by publication.

(Signed) ERASMUS D. SHUTTUCK, *Judge.*

And afterwards, at the June term of said court, begun and held at the place aforesaid, on Monday, the 13th day of June, A. D. 1864, before the said judge thereof, to wit, on the 14th day of said month of June, being the 2d judicial day of said term, the plaintiff in the said above-entitled cause, by his said attorney, appeared in open court and filed the following affidavits of W. W. Chapman and H. L. Pittock, in said cause, to wit:

Affidavit of W. W. Chapman.

In the circuit court of the State of Oregon for Multnomah county, in equity.

A. M. and L. M. STARR
vs.
BENJ. STARK.

I, W. W. Chapman, being sworn, say that on the 16th day of January, 1864, I mailed a certified copy of the complaint and summons in the above-entitled cause, addressed to Benjamine Stark, New London, Conn.; that the day on which said documents were mailed was the earliest mail practicable, after making said order.

W. W. CHAPMAN.

Subscribed and sworn to before me this, 13th day of June, 1864.

J. M. BRECK, *Clerk*,
By W. S. CALDWELL, *Deputy.*

[U. S. revenue stamp, 5 cts.]

Affidavit of H. L. Pittock.

STATE OF OREGON, *Multnomah county, ss:*

Henry L. Pittock, being first duly sworn, says that he is publisher and proprietor of the Weekly Oregonian, a newspaper of general circulation, published in the city of Portland, county and State aforesaid; that the attached advertisement, entitled Notice: Addison M. and Lewis M. Starr, pl'ffs, *vs.* Benj. Stark, def't, in equity, was published in said paper 13 successive weeks; the first publication being in the issue of June 16, 1863, and the last in the issue of April 9th, 1864, and that during that time said paper was regularly circulated among its subscribers.

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HENRY L. PITTOCK.

Subscribed and sworn to before me this 13th day of June, 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

Printer's fees	$18 00
Justice's fees	50

Attached notice.

In the circuit court of the State of Oregon for Multnomah county, in equity.

ADDISON M. and LEWIS M. STARR, plaintiffs,
vs.
BENJAMINE STARK, defendant.

To the defendant in the above-entitled suit:

The Hon. E. D. Shattuck, judge of said court, having, upon the complaint, summons, and affidavit filed in the above-entitled suit, ordered that service of the summons be made by publication in the Weekly Oregonian, a newspaper published in said county, for twelve consecutive weeks: You are, therefore, hereby notified to appear in said court and answer the complaint in said suit, or judgment for want thereof, will be taken against you; and the plaintiffs will apply to the court for the relief demanded therein.

Dated at Portland this 13th day of January, A. D. 1864.

W. W. CHAPMAN, *Att'y for Pl'ffs.*

And afterwards, at said June term of said circuit court, to wit, on the said 14th day of June, 1864, the following order was made by said court in the above-entitled cause, to wit:

This day being the second day of court, came the plaintiffs, by Chapman, their attorney, and it appearing to the satisfaction of the court, by affidavit duly filed, and otherwise, that the order of publication made in this cause had been duly published, and a copy of the complaint and summons duly mailed to the defendant. Thereupon the plaintiffs moved the court for judgment for

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want of an answer. Whereupon came W. W. Page and A. E. Wait, attorneys of this court, and entered the appearance of the defendant; and on their motion the defendant has until 12 o'clock m. of this day to demur, and has leave until Monday to answer the complaint in this cause; and before 12 o'clock m. the defendant, by his attorneys, file demurrer to complaint, as follows, to wit:

Demurrer.

In the circuit court of the State of Oregon for the county of Multnomah, June term, A. D. 1864.

A. M. and L. M. STARR, plaintiffs,
vs.
BENJAMINE STARK, defendant.

And the said Benjamine Stark, defendant, by Grover & Page and Wait & Kelley, his att'ys, comes and demurs to the complaint of the plaintiffs in this cause, and alleges the following as grounds of demurrer to said complaint:

1st. The complaint in this cause is not entitled of any term of court.

2d. It nowhere sufficiently appears in or by said complaint that the said Stephen Coffin, Wm. W. Chapman, and Daniel H. Lownsdale, since deceased, ever had or acquired the ownership of said town lots specified in said complaint.

3d. The complaint in this cause does not state facts sufficient to constitute a cause of action.

GROVER & PAGE, and
WAIT & KELLEY,
Def'ts' Att'ys.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

14 And afterwards, at the said term of court, to wit, on the 17th day of June, 1864, it being the 5th judicial day of said term, the following order was made by said court in the above-entitled cause, to wit:

Order.

Now come the plaintiffs, by W. W. Chapman, their attorney, and the defendant, by Wait & Page, his attorneys, and the demurrer of defendant to complaint came on to be heard, and after argument by counsel said demurrer was sustained by the court, with leave to the plaintiff to amend.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, at said term of court, to wit, on the 15th day of June, 1864, the said plaintiff, by their said attorney, appeared in open court and filed their amended bill in the said above-entitled cause, which said amended bill or complaint consisted of the original bill as above set forth, which was thereupon refiled, together with certain amendments or additions appended thereto, which are as follows, to wit:

Amended bill.

Amendment No. 1. All the while retaining the general possession and ownership of said land claim, with the avowed and published intention of obtaining from the United States title to said land claim, and making to the purchasers and holders of lots, particularly to the purchaser of the block in the bill mentioned, a good and sufficient deed therefor, of which the said defendant, Benjamin Stark, then and there had notice.

Amendment No. 2. That it was with the avowed and published intention on the part of said Benjamin of obtaining and re-
15 taining the general possession of said land claim conveyed to him by said Daniel, and of obtaining title thereto from the United States, and thereupon making, ratifying, and confirming title by good and sufficient deeds to the purchasers of lots in said tract from the said Daniel, or his lawful attorneys in fact, in good faith for a valuable consideration; that the said Benjamin entered into said agreement with said Daniel, and accepted and recognized the ratification and amendment thereof of the 13th of April, 1850, herein mentioned, until which time the said Coffin & Chapman were ignorant of said contract agreement between the said Daniel and the said Benjamin, and particularly on the 20th day of March, 1850, the date of the conveyance of block 81 to W. W. Chapman; and the plaintiffs aver that the conveyance of block 81 to the said Chapman was in good faith and for a valuable consideration.

STATE OF OREGON, *Multnomah county, ss:*

I, Lewis M. Starr, being sworn, say that the allegations of the foregoing bill, as amended, are true, as he verily believes.

LEWIS M. STARR.

Subscribed and sworn to before me this 18th June, A. D. 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

And afterwards, at said term of said circuit court, to wit, on the 20th day of June, the said defendant, by his said attorneys,
16 appeared in open court and filed the following answer to said amended bill in the said above-entitled , which said answer reads as follows, to wit:

Answer to amended bill.

In the circuit court of the State of Oregon for the county of Multnomah, in equity.

ADDISON M. and LEWIS M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant.

And the said defendant, Benjamin Stark, by Grover & Page and Wait & Kelley, his att'ys, comes and for answer to the amended complaint of the plaintiffs in this cause, says that it is untrue, and he denies that the plaintiffs are the owners of lots numbered one, two, and four, in block numbered eighty-one, in the city of Portland, specified in said complaint. The defendant denies that the plaintiffs and those under whom they claim, have been in peaceable possession of the said lots since the 13th day of December, 1849. Defendant admits that the plaintiffs now are, and for some time past have been, in the possession of said lots, and that they have made valuable improvements thereon; but he avers that the entire possession by said plaintiffs of said lots and the said improvements thereon have been held and made with full knowledge on their part; that the defendant was the claimant under the act of Congress of Sept. 27, 1850, commonly called the "Donation law," and the amendments
17 thereto, of a tract of land including said town lots. The plaintiff denies that from the 13th day of December, 1849, till about the 20th of March, 1850, S. Coffin, D. H. Lownsdale, now deceased, and W. W. Chapman were claimants jointly and settlers, and in possession of what was known as the Portland land claim. The plaintiff (defendant?) denies that the said Coffin, Lownsdale, and Chapman retained or held the general possession or ownership of said land claim; and as to whether the said Coffin, Lownsdale, and Chapman avowed or published their intention of obtaining from the United States title to said land claim, or making to the purchasers or holders of lots, or particularly to the purchase of the block in the bill mentioned, a good and sufficient title therefor, said defendant has no knowledge or information sufficient to form a belief; but he denies notice of an avowed or published intention thereof by them. As to whether, on the 20th day of March, 1850, the said Coffin, Lownsdale, and Chapman by deed, sold, or conveyed, or delivered the possession to said Chapman, for a valuable consideration, block eighty-one, specified in said bill of complaint, the said defendant has no knowledge or information sufficient to form a belief. The defendant denies that the said Chapman and his grantees on down to the plaintiffs, have been in the uninterrupted and peaceable possession of said lots ever since the execution of said con-
18 veyance, and the defendant denies knowledge and information, as charged in said complaint. The defendant admits that the said Daniel H. Lownsdale, since deceased, being in San Francisco, California, on the 1st day of March, A. D. 1850, entered into a certain written agreement with the defendant, Benjamin Stark, re-

specting the Portland land claim; but the defendant denies that he was then a resident of said San Francisco or of California, and he denies that said agreement was made subject to the ratification thereof by said Coffin and Chapman. The defendant denies that he accepted or recognized any ratification or amendment of said agreement, made on the 13th of April, 1850, or otherwise. As to whether said Coffin and Chapman were ignorant of said agreement between said Lownsdale and said defendant until the 20th day of March, 1850, the defendant has no knowledge or information sufficient to form a belief. As to whether the conveyance of block 81 to said Chapman was in good faith and for a valuable consideration, this defendant has no knowledge or information sufficient to form a belief. The defendant denies that the so-called amendments to said written agreement were lawfully made; he denies that the subsequent amendments to said written agreement ever were lawful or authorized. The defendant denies that, for a valuable consideration or otherwise, he became bound to ratify and confirm all sales of lots prior to the 13th day of April, 1850. The defendant denies that the said block No. 81
19 was or is included within the tract of land so released; and he denies that said block was one of the blocks the sales of which were confirmed, and he denies any notice thereof. The defendant denies that by a regular chain of title from the said Chapman, the plaintiffs are the owners of said lots one, two, and four. The defendant denies that he has departed from the jurisdiction of this State except temporarily, and he avers that he is a citizen of this State.

And the said defendant further says that the within agreement, specified in the amended complaint, was entered into between the said Daniel H. Lownsdale and this defendant in good faith, for the purpose of settling their respective rights in and to the Portland land claim, but that the so-called amendments or ratifications thereof were never authorized by the defendant; that the said Coffin and Chapman had no authority to enlarge, change, or modify said contract between said Lownsdale and defendant, and that the said John H. Couch had no authority to make the assumed ratification appended to said agreement, or any other ratification, modification, or change of said contract; that the defendant is now, and at all times has been, ready and willing to do and perform all things on his part and behalf to be done and performed agreeable to the terms of said agreement, *but that neither the said Lownsdale nor any other person for him, has
20 done or performed any of the matters or things agreed by said contract to be performed by said Lownsdale.

And the said defendant further says that he is the owner of said lots one (1,) two (2,) and four (4,) in block eighty-one (81,) in the city of Portland, specified in the amended complaint, in fee simple, and that he owns and holds said lots as a part and parcel of a tract of land covering said lots by patent from the government of the United States, bearing date December eighth, A. D. 1860, which said patent

was regularly issued and delivered to him, and is duly recorded in the recorder's office in the county.

GROVER & PAGE and
WAIT & KELLEY,
Def't's Att'ys.

STATE OF OREGON, *Multnomah county, ss:*

I, A. E. Wait, being duly sworn, say that I am one of the att'ys of the defendant in this case, and that I believe the foregoing answer to be true. The reason why this verification is not made by the defendant, Benjamin Stark, is that he now is, and for several months past has been, absent from said county of Multnomah and said State.

A. E. WAIT.

Subscribed and sworn to this 20th day of June, A. D. 1864, before me.

J. M. BRECK, *Clerk*,
By W. S. CALDWELL, *Deputy*.

*NOTE.—Insert after the word agreement, on the 8th line of 4th page:

But this defendant avers that the said Lownsdale wholly
21 neglected and refused to do and perform the conditions of said contract by him agreed to be done and performed, and that neither the said Lownsdale, his heirs, executors, administrators, or assigns, have at any time paid, or caused to be paid, any money or moneys for the consideration of the pretended and alleged sale of the lots mentioned in the complaint or the exhibits thereto annexed; nor has the said Lownsdale, or his heirs, executors, or administrators or assigns, ratified, affirmed, or quitclaimed the lots sold by this defendant south of said line; and the said Lownsdale during his lifetime, although often requested, utterly refused and neglected to convey to defendant to lot agreed to be conveyed by him to this defendant as he was bound to do under the covenants of said agreement.

Defendant further shows to the court that neither the said Coffin nor the said Chapman, the pretended parties to said agreement, nor any one claiming or pretending to own and claim the said lots under them, or either of them, or the said Lownsdale, nor the defendants, have at any time paid or caused to be paid to this defendant the alleged consideration, nor any part thereof, for the pretended and alleged sale of said lots mentioned in the complaint.

And afterwards, at said June term of said circuit court, to wit, on the 20th day of June, 1864, the said plaintiffs, by said attorney, appeared in open court, it being the 18th judicial day of said
22 term, and filed a motion to make more definite and to strike out, which said motion reads as follows, to wit:

Motion.

In the circuit court of the State of Oregon for Multnomah county, in equity.

A. M. & L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, defendant.

The plaintiffs, by Chapman, attorney, moves the court to strike out and cause to be made more definite, the following clauses and paragraphs of the defendant's answer:

2d page. Strike out the clause from the 11th line to *to* the word "belief" in the 17th line inclusive, because the same is sham, frivolous, and irrelevant.

Strike out all the 28th, and to the word "the" in the 31st line, because the defendant is estopped by the agreement, which sets forth his residence.

3d page. Strike out 10 and 11 lines, because the allegation there made is disposed of by demurrer, and as sham, and irrelevant.

4th page. Strike out the allegation from the 5th to 11th line, inclusive as sham and irrelevant.

Make more definite and certain.

Page 1. From 12 to 15 line, inclusive, make more definite and certain, by stating if not from 13th Dec., &c., how long have they been in possession.

1, 2. Make more definite and certain the allegations from the 25th line on the first page to the word "and" in 2d line, 2d page, 23 because the denial should be in language referring to the particular possession.

2. Make more definite the allegation on the 21 and 22 lines, 2 page. It is not stated what knowledge and information he denies. There more than one allegation in the complaint to which it might be applied.

2d page. Make more definite and certain the statement from the word "as" on the 34th line, to the word belief, on the 4th line of the 3d page, inclusive. It should respond as to the 20th day.

3 page. Make more definite and certain the allegations from the word amendments in 30th line, to and inclusive of the word "defendant," in 32d line.

4th page. Make more definite and certain the allegations from the 12th line on page 4, to the close of the answer, by setting forth the patent or patent certificate, or copies thereof.

CHAPMAN, *Att'y for Pl'ff.*

And afterwards, at said June term of court, to wit, on the 5th day of July, 1864, it being the 19th judicial day of said term, the following order was made by the said court in the above-entitled cause, to wit:

Order.

Now come the plaintiffs, by W. W. Chapman, their attorney, and the defendant, by Wait & Page, his attorneys, and on motion of the plaintiff, it is ordered by the court that so much of the defendant's original answer as is embraced in the 8th, 9th, 10th, 11th, lines of the 4th page, and the 24 lines of the amendment to said original answer be, and the same are, stricken out, with leave to amend. It is further ordered by the court that the plaintiffs reply by the 11th of August next, and that this cause be continued to a special term of this court, to be held August 15, 1864, for a hearing herein.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, at a special term of said circuit court, begun and held at the place aforesaid, on Monday, the 15th day of August, 1864, (in pursuance of an order of said court to that effect,) to wit, on the 16th day of said month of August, 1864, it being the 2d judicial day of said special term, an order in said above-entitled cause was made by said court, which reads as follows, to wit:

Order.

Now at this time comes the plaintiffs, by W. W. Chapman, their attorney, and the defendant, by Grover & Page, Wait & Kelley, his attorneys, and the defendant moves the court to strike out part of reply, and files motion as follows, to wit:

In the circuit court of the State of Oregon for the county of Multnomah, in equity.

A. M. & L. M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant.

Now comes the defendant and moves the court to strike out from the replication herein, the matter contained upon each and every line thereof, because the same is—1st, redundant matter; 2d, irrelevant; 3d, inconsistent with the complaint.

Portland, August 1st, 1864.

WAIT & KELLY, GROVER & PAGE,
Attorneys for the Defendant.

Which said motion the court sustains, and the plaintiffs have leave until Thursday morning next to file amended complaint, and plaintiffs have leave to withdraw reply, filed in this cause.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, at said special term, to wit, on the 20th day of August, 1864, it being the sixth judicial day of said special term, the said plaintiffs by their said attorney, appeared in open court, and filed an amended bill or complaint in said above-entitled cause, which reads as follows, to wit:

Amended bill.

In the circuit court of the State of Oregon for Multnomah county, suit in equity.

A. M. & L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, def't.

The plaintiffs represent to the court that they are the owners and in possession of lots Nos. 1 (one,) two (2,) four (4,) in block No. eighty-one (81,) in the city of Portland, Multnomah county, Oregon, as known and designated upon the map of said city, and that they and those under whom they claim to have been in the peaceable possession thereof since the 13th day of December, 1849, and have made large and valuable improvements thereon, of which the said defendants have at all times had notice.

26 The plaintiffs further represent that from the 13th of December, 1849, till about the 20th of March, 1850, S. Coffin, D. H. Lownsdale, now deceased, and W. W. Chapman were claimants jointly, and settlers, and in possession, as such, of what was 27 known as the Portland land claim, a tract of land of about 640 acres, embracing the said city of Portland. That during the time they were so in possession of said claim they laid off and sold many lots and blocks in said city, all the while retaining the general possession and claim of ownership of said land claim, with the avowed and published intention of obtaining from the United States title to said land claim, and making to the purchasers and holders of lots, particularly to the purchasers and holders of the block 81, in the bill mentioned deed therefor, of which the said defendant, Benjamin Stark, then and there had notice.

That on the 20th day of March, 1850, the said Coffin, Lownsdale, and Chapman, by deed of that date, sold and conveyed to the said W. W. Chapman the said block No. 81, in said city, and delivered the possession thereof accordingly, as will more fully appear on reference to a copy of said deed herewith filed, marked B, and made a part of this bill, and that the said Chapman, and his grantees, on down to the plaintiffs, have been in the uninterupted and peaceable possession of said lots ever since the execution of said conveyance, until as herein complained of, of which the said defendant has at all times had notice.

The plaintiffs further show that the said Daniel, being in San Francisco, California, on the first day of March, 1850, entered into a certain written agreement with the said Benjamin Stark, then a resident there, respecting the sale or release to said defendant of a cer- 28 tain part of said claim, subject to the ratification of the same or certain portions thereof by said Coffin and Chapman. That by the terms of said written agreement and subsequent amendments thereto, lawfully made, the said defendant, Stark, for a valuable consideration, became bound to ratify and confirm all sales and conveyances of such lots as aforesaid, prior to the 13th day of April, 1850, the time the said Coffin and Chapman first had notice of said

written agreement, which will more fully and at large appear on reference to said agreement, a copy of which is herewith filed, marked C, and made a part of this complaint; that it was with the avowed and published intention (on the part of the said Benjamin) of obtaining an retaining the general possession of said land claim, conveyed to him by said Daniel, and of obtaining title thereto from the United States, ratifying and confirming said sales and conveyances, and executing good and sufficient deeds to the purchasers of lots in the said tract from the said Daniel, or his lawful attorney in fact, in good faith, for a valuable consideration, that *that* the said defendant entered into said agreement with said Daniel, and accepted and recognized the ratification and amendment of said agreement of the 13th of April, 1850, until which time the said Coffin and Chapman were ignorant of said contract and agreement between the said Daniel and said Benjamin, and particularly on the 20th day of March, 1850, the date of the conveyance of block 81 to W. W. Chapman, made in good faith and for a valuable consideration.

29 That said Benjamin accepted of said release, ratification, and amendment thereof, and entered into the possession of the tract of land so released, which included the said block No. 81, and was and is one of the blocks the sales and conveyances whereof was to be by the said Benjamin ratified and confirmed; of all of which the said defendant had notice. The plaintiffs further show that by a regular chain of title from the said W. W. Chapman to said plaintiffs, they are the owners and in possession of said lots Nos. one (1,) two (2,) and four (4,) in said block No. 81, in said city. That the said Benjamin Stark claims to have received a title from the United States for said tract so released, embracing said block and the lots aforesaid, and sets up said title in virtue of an alleged patent from the United States to himself, bearing date the 8th day of December, 1860, a copy of which is herewith filed, marked D, and made a part of this bill.

31 But now so it is that the said defendant not only refuses to recognize, ratify, or confirm the sales and conveyances aforesaid, of the lots aforesaid, claimed by them, but insists on claiming the said lots by virtue of said patent, and has threatened to sue the plaintiffs for the possession thereof, and denies the pl'ffs rights, either under the said agreement, amendments, and ratifications, and recognitions, or under the said city patent or the reservations in his said patent contained, by means whereof the plaintiffs' title and right to said property is greatly c ouded and his possession greatly jeopardized.

Wherefore the plaintiffs pray that the said patent of the said defendant may be set aside and held for nought, and that he be compelled to release to the plaintiffs all his right, title and interest, claim and demand, to the said lots, and forever restrained from setting up any title to said property by means of the premises, and that the plaintiffs have such other, further, and general relief as to equity appertains.

CHAPMAN, *Attorney.*

OREGON, *Multnomah county, ss:*

A. M. Starr, one of the plaintiffs, being sworn, says that the facts set forth in the foregoing complaint are true, as he verily be-
32 lieves.

A. M. STARR.

Subscribed and sworn to before me this 19th day of August, A. D. 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

Exhibit A.—Certificate No. 19.

The United States of America to all to whom these presents shall come, greeting:

Whereas the corporate authorities of the city of Portland, in Multnomah county, Oregon, in trust for the several use and benefit of the occupants thereof, according to their respective interests under, to the town site act of Congress, approved 23d May, 1844, entitled "An act for the relief of the citizens of towns upon lands of the United States under certain circumstances," have deposited in the General Land Office of the United States a certificate of the register of the land office at Oregon City, whereby it appears that full payment has been made by the said corporate authorities of the city of Portland, and interest as aforesaid, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the south half of the southwest quarter and river lot number eight of section thirty-four, in township one north, of range one east, river lots numbered five and six, the west half of the northwest quarter and the northwest quarter of the southwest quarter of section three, in township one south, of range east, in the district of lands subject to sale at Oregon City, Oregon, containing three hundred and seven acres and forty-nine hundreths of an acre, subject, however, to the de-
33 cision of the Commissioner of the General Land Office 18th October, 1858, expressly reserving any valid claims which may exist in virtue of the several donations of Benjamin Stark, certif. No. 69; Daniel H. Lownsdale, certif. No. 1,022; William W. Chapman, certif. No. 68; and Stephen Coffin, certif. No. 67; according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tracts have been purchased by the said corporate authorities of the city of Portland, and in trust, as aforesaid:

Now know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said corporate authorities of the city of Portland, in trust for the several use and benefit of the occupants thereof, according to their respective interests under said

act of 23d May, 1844, and to their successors and assigns in trust as aforesaid, the said tracts above described. To have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said corporate authorities of the city of Portland in trust for the several use and benefit of the occupants thereof, according to their respective interests, under said act of 23d May, 1844, and to their successors and assigns in trust as aforesaid, subject, however, to the conditions and reservations herein expressed.

In testimony whereof, I, James Buchanan, President of the United States of America, have caused these letters to be made
34 patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the seventh day of December, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fifth.

By the President.

JAMES BUCHANAN,
By J. B. LEONARD, *Sec'y.*

Recorded vol. 1, page 1, E. Rec'd for record September 12th, 1862.

J. N. GRANGER,
Recorder of the General Land Office.

STATE OF OREGON, *Multnomah county, ss:*

I hereby certify that the copy of the instrument of writing hereto attached has been compared by me with the record of the original recorded on pages 661 and 662 of Book C of the record of deeds of said county, in said State, and that it is a correct transcript of the whole of such original certificate No. 19, as appears of record in said book in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at office, in Portland, the 12th day of July, A. D. 1864.

[L. S.] H. C. COULSON, *County Clerk.*

Exhibit B.

This indenture, made and entered into this 20th day of March, A. D. 1850, between Stephen Coffin, D. H. Lownsdale, and W. W. Chapman, proprietors, of Portland, of the first, and W. W. Chapman, of Portland, Washington county, Oregon, of the second part, witnesseth, that the party of the first part, for and in consider-
35 ation of the sum of two thousand dollars, the receipt whereof is hereby acknowledged, doth release, confirm, and quit-claim unto the said Chapman the following described property, in the said town of Portland, to wit: Lots Nos. 1 (one,) 2 (two,) 3 (three,) and 4 (four,) in fractional block 81 (eighty-one,) being the warehouse fraction, and situated east of Water street, to the water, north of Oak street and south of Pine street, according to the plat of said town.

In testimony whereof, the parties have hereunto set their hands and seals day and year aforesaid.

(Signed) S. COFFIN. [SEAL.]
D. H. LOWNSDALE.
By his attorney-in-fact, W. W. CHAPMAN. [SEAL.]
W. W. CHAPMAN. [SEAL.]

Exhibit C.

This indenture, made the first day of March, one thousand eight hundred and fifty, by and between Benjamin Stark, of the town of San Francisco, California, party of the first part, and Daniel H. Lownsdale, of Portland, Oregon, party of the second part, witnesseth: Whereas it is deemed expedient by the parties hereto to determine, settle, and adjust the title and possession of certain lands hereinafter described, and to preclude all future controversy in the premises: Now, therefore, the parties aforesaid, in consideration of the mutual covenants and agreements hereinafter contained, and of one dollar by each of the said parties to the other in hand paid, the receipt whereof is hereby acknowledged, have concluded, covenanted, and agreed as follows: The said party of the first part has
36 bargained, sold, remised, and released, and forever quitclaimed, and by these presents does bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part, his heirs and assigns, all his right, title, and interest in all that portion or parcel of a certain tract of land, known as the Portland land claim, and lying in the county of Washington (late Tuality) in Oregon, aforesaid, on the west bank of the Willamette river, situate south of a certain line, described as follows: beginning at the point on the west bank of said river at low-water mark, easterly from the southeast corner of a certain tract of land or oblong piece of ground, known on the plat of said town of Portland as Stark's block, where a straight line running parallel with Washington street (late Tuality) will cut the river aforesaid; thence running westerly to the southeast corner of said Stark's block; thence westerly, with the dividing line between said Stark's block and an oblong piece of ground, formerly known as the Pettigrove block, (the same on which the dwelling-house is situated, now occupied by the said Daniel H. Lownsdale and Stephen Coffin,) to the southwest corner of the said Stark's block; thence westerly, with the same bearing of said line and parallel with Washington (late Tuality) street, to the outside line of the claim aforesaid. To have and to hold the same, with all the tenements, easements, rights, privileges, and appurtenances thereunto belonging or appertaining, unto the said party of the second part, heirs and assigns, to his and their sole use and behoof forever, so that neither the said party
37 of the first part, nor his heirs, nor any person claiming under him or them, shall, at any time hereafter, by any way or means, have, claim, or demand any right to the aforesaid premises or appurtenances, or to any part or parcel thereof, forever, hereby ratifying and confirming, so far as his right, title, or interest is concerned, all

conveyances which the said party of the second part has heretofore made, or may hereafter make, in the premises hereinbefore quitclaimed.

And the said party of the second part has bargained, sold, remised, released, and forever quitclaimed, and by these presents, does bargain, sell, remise, release, and quitclaim, unto the said party of the first part, his heirs and assigns, all his right, title, and interest in all that portion or parcel of the tract of land known as the Portland land claim, before mentioned and described, situate, lying, and being north of the line hereinbefore more particularly defined, set forth, and described. To have and to hold the same, with all the tenements, easements, rights, privileges, and appurtenances thereunto belonging or appertaining, unto the said party of the first part his heirs and assigns to his and their sole use and behoof forever, so that neither the said party of the second part, nor his heirs, nor any person claiming under him or them, shall, at any time hereafter, by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances, or to any part or parcel thereof, forever, hereby ratifying and confirming all conveyances which the said party of the first part has heretofore made, or may hereafter make, forever in the premises so as aforesaid by the said party of the second part quit-
38 claimed. And the said party of the first part, so far as his right, title, and interest are concerned, hereby ratifies and confirms all conveyances made by the said party of the second part, or his lawful attorney, previous to the first day of January, one thousand eight hundred and fifty, of the following lots, namely: lots numbered one and three, in block twenty-six; lots numbered three and four in the block where the school-house stands, and lots numbered one, two, three, and four in block numbered seventeen; all said lots lying north of said line, and being numbered and described *and described* on the plot of the town of Portland aforesaid. And the said party of the first part likewise ratifies and confirms all grants and conveyances made by the said party of the second part, or his lawful attorney, in good faith and for a valuable consideration, to this date subsequent to said first day of January, of lots situated north of said line, provided always, and the said party of the second part hereby covenants for himself, his heirs, executors, and administrators, that he will pay over all sums of money which have, since first day of January, been, or may hereafter be paid unto said party of the second part, his heirs, executors, administrators, or assigns, for and in consideration of the grants and conveyances aforesaid. And the said party of the second part further covenants for himself, his heirs, executors, and administrators, that in case any person or persons holding or claiming under him, except the holders of those lots, and under those conveyances especially hereinafter confirmed by the said party of the first part,
39 shall refuse to ratify and confirm this indenture, he, the said party of the second part, will, at the option of the said party of the first part at any time within six months from this date, cancel this indenture, and release all rights acquired under these presents by the parties hereto.

And the said party of the second part, for himself, his heirs, executors, and administrators, further covenants that he will, within six months from the date of these presents, out of the lots on the south side of the above-described line, and situate in said Portland claim, not now conveyed or granted away by the said party of the second part, or his lawful attorney, make, seal, and deliver to the said party of the first part a deed good and sufficient in law of any one unimproved lot fifty by one hundred feet, which the said party of the first part may select, without cost or expense to the said party of the first part.

In witness whereof, the parties hereto have hereunto interchangeably set their hands and seals the day and year first above written.

BENJ. STARK.
D. H. LOWNSDALE.

Signed, sealed, and delivered in presence of—
JOHN F. EMMET.
H. L. DODGE.

STATE OF CALIFORNIA, *District of San Francisco, ss:*

Personally appeared, this second day of March, A. D. 1850, Benjamin Stark and D. H. Lownsdale, to me personally known to be the signers and sealers of the *of the* foregoing instrument, and acknowledged that they executed the same, and that it is their free act and deed for the purposes therein mentioned.

Before me,

JNO. W. GEARY,
First Alcalde of the District of San Francisco.

STATE OF CALIFORNIA, *District of San Francisco, ss:*

I, Henry L. Dodge, clerk of the alcalde's court and the court of the first instance within and for the district of San Francisco aforesaid, hereby certify that John W. Geary is, and was at the time of taking the foregoing acknowledgment, first alcalde of the district of San Francisco aforesaid, and that his signature affixed is genuine. In witness whereof, I have hereunto set my hand the seal of said court this second day of March, A. D. 1850.

[L. S.] H. L. DODGE,
Clerk Court of First Instance, Dist. of San Francisco.

Recorded November 23d, A. D. 1850.

WILLIAM GEIGER, JR., *Recorder.*

We, Stephen Coffin and W. W. Chapman, partners with D. H. Lownsdale, in the town of Portland, hereby ratify and confirm a certain agreement between Benj. Stark and D. H. Lownsdale, bearing date the first day of March, A. D. 1850, respecting an adjustment of title,

hereby placing the disposition of property up to notice of said
41 adjustment upon the same footing with the disposition of property before the first day of January last.

In testimony whereof, we have hereunto set our hands and seals the 13th day of April, A. D. 1850.

(Signed) S. COFFIN. [L. S.]
W. W. CHAPMAN. [L. S.]

Portland, O. T., April 15th, 1850.

I ratify the above agreement as far as my interest is concerned in said property.

JOHN H. COUCH,
For BENJ. STARK.

Recorded this 23d day of November, A. D. 1850.
WILLIAM GEIGER, JR., *Recorder.*

D.—Donation certificate No. 69.—*Notification No.* 328.

Whereas in conformity with the provisions of the 7th section of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to settlers of the public lands," Benjamin Stark, of the county of Washington, in the said Territory, claiming a donation right in virtue of the act aforesaid to the following tract of public lands, known and designated in the surveys and plats of the United States as the claim No. 45, being parts of sections 33 and 34, T. 1 N., R. 1 E., and claim No. 47, being part of section 3, T. 1 S., R. 1 E., particularly bounded and described as follows: beginning at a point 16.34 chains north of
42 SW. corner of section 34, T. 1 N., R. 1 E.; thence S. 70° 15 E., 47.25 chains; thence N. 4° E., 0.37 chains; thence N. 25° E., 5.43 chains; thence N. 11° E., 5.42 chains; thence N. 89° 70′ W., 53.57 chains; thence S. 70° 15′ E., 5.64 chains, to the place of beginning; containing 48.02 acres, having proven to the satisfaction of the surveyor general of Oregon the fact that such settlement was commenced on the first day of September, 1849, four years prior to the date hereof, and having, in pursuance of the requirements of the 7th section of the act aforesaid, established by two disinterested witnesses the fact of continued residence and cultivation required by the 4th section of the said act:

Now, therefore, be it known that I, John B. Preston, surveyor general of public lands in Oregon, do hereby, and pursuant to the 7th section of the act aforesaid, certify to the Commissioner of the General Land Office the facts aforesaid, accompanied by the evidence thereof, in order that a patent may be issued to said claimant for the tract of land described as required by the 7th section of the act aforesaid, provided the said Commissioner shall find no valid objection thereto.

Given under my hand, at the office of the surveyor general of public lands in Oregon, this tenth day of September, 1853.

JOHN B. PRESTON,
Surveyor General of Public Lands in Oregon.

Indorsement.

I, Wm. A. Starkweather, register of U. S. land office at
43 Oregon City, Oregon, hereby certify that the within is a correct copy of the donation certificate of Benjamin Stark, issued by John B. Preston September tenth, 1858, on file in this office; that I have carefully compared it with the original certificate No. 69, and that it is full and complete transcript of said original.

Land office, Oregon City, Oregon, July 9th, 1864.

WM. A. STARKWEATHER, *Register.*

Exhibit E.

The United States of America to all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office of the United States a certificate, numbered sixty-nine, of the surveyor general of the public lands in Oregon, whereby it appears that under the provisions of the act of Congress approved the 27th day of September, 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands," the claim of Benjamin Stark, of Washington county, Oregon, notification No. 328, has been established to a donation of one half section or 32 acres of land, and that the same has been surveyed and designated as claim No. 45, being parts of sections 33 and 34, township one north, of range one east, and claim No. 47, being part of section 3, in township one south, of range one east, according to the offi-
44 cial plat of survey returned to the General Land Office by the surveyor general, being bounded and described as follows, to wit: beginning at a point sixteen chains and thirty-four links north of the southwest corner of section thirty-four, in township one north, of range one east; thence south seventy degrees and fifteen minutes east, forty-seven chains and twenty-five links; thence north four degrees east, thirty-seven links; thence north twenty-five degrees east, five chains and forty-three links; thence north four degrees east, six chains and fifty-two links; thence north eleven degrees east, five chains and forty-two links; thence north eighty-nine degrees and ten minutes west, fifty-three chains and fifty-seven links; thence south seventy degrees and fifteen minutes east, five chains and sixty-four links, to the place of beginning, in the Willamette land district, Oregon Territory, containing forty-eight acres and $\frac{1}{100}$.

Reservation.

And whereas it appears that the greater portion of this claim is covered by an entry made on the first day of February, 1858, by the corporate authorities of the city of Portland, which entry has been approved and will be patented to the said corporate authorities in trust for the several use and benefit of the occupants thereof, according to their respective interests:

Now know ye that the United States of America, in consideration of the premises and in conformity *and in conformity* with the provisions of *of* the act aforesaid, have given and granted, and by
45 these presents do give and grant, unto the said Benjamin Stark the tract of land above described, subject to such rights as may exist in virtue of the aforesaid entry for the city of Portland. To have and to hold the said tract, with the appurtenances, unto the said Benjamin Stark and to his heirs and assigns forever, subject, as aforesaid, to said entry for the city of Portland.

In testimony whereof, I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this 8th day of December, in the year of our Lord one thousand eight hundred and sixty, and of independence of the United States the eighty-fifth.

By the President:

[L. S.] JAMES BUCHANAN,
By J. B. LEONARD, *Secretary.*

Recorded vol. 1, page 464.

J. N. GRANGER,
Recorder of the General Land Office.

And afterwards, at said special term of said court, to wit, on the 20th day of August, 1864, it being the 6th judicial day of said special term, the said defendant, by his said attorneys, appeared in open court and filed a petition to remove the above-entitled cause to the circuit court of the United States for the district of Oregon; which said petition reads as follows, to wit:

Petition.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, defendant.

46 To the honorable circuit court, Hon. E. D. Shattuck, judge:

The defendant above named respectfully shows to the said court that he is sued in this court as a non-resident of this State, and as a citizen of the State of Connecticut; that defendant is in the State of Connecticut at this time; that the value of the property in controversy exceeds the sum of three thousand dollars, and the said defendant is willing and hereby as sureties W. S. Ladd and William Cree as sureties in such sum as may be directed, conditioned as provided by law for the removal of suits from the State courts to the circuit court of the United States.

Wherefore this defendant prays that all proceedings therein be stayed, and that this suit be certified to the United States circuit court in the manner provided by law.

WAIT & KELLEY,
GROVER & PAGE,
Att'ys for Defendant.

STATE OF OREGON, *County of Multnomah, ss:*

I, W. W. Page, being sworn, say that I verily believe the foregoing petition to be true, and the reason I make this verification is because the defendant is now in the State of Connecticut, and because that I am one of the attorneys for defendant.

W. W. PAGE.

Sworn to and subscribed before me this 20th August, 1864.

H. C. COULSON, *Clerk*,
By Q. A. BROOKS, *Deputy*.

47 And afterwards, at said special term of said court, to wit, on the 22d day of August, 1864, it being the 7th judicial day of said term, the following order was made by the said court in the said above-entitled cause, to wit:

Order.

Upon petition of defendant to have this cause removed to the circuit court of the United States for the district of Oregon, Grover and Page and Wait, appearing for the defendant, and Chapman, attorney, appearing for the plaintiffs, it is adjudged that said petition be denied, and that the defendant plead by demurrer if he make that defence to the amended bill on or before the twenty-ninth day of this month, or that he answer on or before the first day of November next. In case a demurrer be filed, it is ordered that the same be heard in vacation, upon motion of either party, on notice to the other as required by statute.

(Signed) ERASMUS D. SHATTUCK, *Clerk*.

And afterwards, to wit, on the 23d day of August, 1864, the said defendant by his said attorneys, filed in the office of the clerk of the said circuit court a demurrer to the said amended bill of plaintiffs, which said demurrer reads as follows, to wit:

Demurrer to amended bill.

In the circuit court of the State of Oregon for the county of Multnomah, *ss:*

A. M. and L. M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant.
} Demurrer to amended complaint.

48 Benjamin Stark, defendant, demurs to all that portion of the complaint setting up the town site law of 1844, the issuance of patent to the city of Portland, and the claim of plaintiff thereunder, for that the same does not state facts sufficient to constitute a cause of action or grounds for a suit.

2. And also to the rest of the complaint, because it nowhere appears by said complaint that Stephen Coffin, W. W. Chapman, and Daniel H. Lownsdale, or either of them, had or acquired the ownership of said town lots specified in said complaint.

3. The complaint in this suit does not state facts sufficient to constitute a cause of action or grounds for a suit in equity.

WAIT & KELLEY,
GROVER & PAGE,
Attorneys for Defendant.

And afterwards, in the said circuit court of the State of Oregon, for the said county of Multnomah, in vacation after the said June term, 1864, to wit, on the 15th day of October, 1864, the following order was made by the court in the said above-entitled cause, to wit:

Order.

This day the plaintiffs by Chapman, their attorney, and the defendant by Grover & Page, his attorneys, came before the court at chambers, and a hearing of the demurrer filed by defendant to the amended bill comes on, and counsel are heard thereon. Whereupon, in consideration thereof, it is ordered by the court that said demurrer be sustained as to all that portion of the amended complaint
49 which sets up the patent to the city of Portland, and claim thereunder by reason of reservations in or to the alleged invalidity of the patent to Benjamin Stark; and as to the other portions of said complaint, and the other points specified in the demurrer, said demurrer is overruled, and pencil marks are drawn across those portions of the complaint as to which the demurrer is sustained; to which ruling and order the parties except.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, in the said circuit court in vacation after the said June term, 1864, to wit, on the 28th day of October, 1864, the following order was made by the said court in the said above-entitled cause, to wit:

Order.

On this day comes W. W. Chapman, attorney for the plaintiffs, and Grover & Page, attorneys for the defendant, and on motion of the plaintiff, it is ordered that the order of the court heretofore made in this cause in vacation, and entered, sustaining the demurrer of the defendant to the amended complaint in part, and overruling the same in part, be, and is, set aside and taken for naught, and the plaintiffs have leave to amend their bill of complaint, and are ordered to elect which cause of suit they will proceed upon, and to set forth the same in the said amended bill to be filed; to which order requiring the plaintiffs to elect the plaintiffs except.

It is further ordered that said amended bill be filed within five days, and that the answer to the same be filed within ten days there-
50 after.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, to wit, on the 1st day of November, A. D. 1864, the said plaintiffs, by their said attorney, filed in the office of the clerk of said circuit court their amended bill engrossed in the said above-entitled cause, which said bill reads as follows, to wit:

Amended bill engrossed.

In the circuit court of the State of Oregon for Multnomah county.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, defendant.

Amended bill engrossed under the order sustaining the demurrer and ordering the plaintiffs to elect.

The plaintiffs represent to the court that they are the owners and in possession of lots Nos. one (1,) two (2,) and four, in block No. eighty-one (81,) in the city of Portland, Multnomah county, Oregon, as known and designated upon the map of said city, and that they and those under whom they claim have been in peaceable possession thereof since the 13th day of December, 1849, and have made large and valuable improvements thereon, of which the said defendant has at all times had notice.

51 The plaintiffs further represent that such proceedings according to law, in the office of the register and receiver of the land office at Oregon City, Oregon, and in the Land Department of the United States, was had as that on the 7th day of December, 1860, a patent from the United States was duly issued to the corporate authorities of the said city of Portland, in trust for the benefit of occupants of town lots in said city, as therein set forth, for the following tracts of the public lands of the United States, to wit: the S. ½ of the SW. ¼ and river lot No. 8, in section 34, in T. 1 N., R. 1 E., and river lots Nos. 5 and 6; the W. ½ of the NW. ¼ and the NW. ¼ of the SW. ¼ of sec. 3, in T. 1 S., R. 1 E., all of which will more fully and at large appear by said patent, a copy whereof is herewith filed, and made a part of this amended complaint, and marked A. That the tracts of land so entered as aforesaid are situate within the corporate limits of said city, and embrace the said lots hereinbefore described. That the said plaintiffs and those under whom they claim have been occupants of said lots since the 13th day of December, 1849, and that they are entitled to the benefits of the said city entry and patent aforesaid, but that the legislature of the State of Oregon at the time of the commencement of this suit had passed no law whereby the trust reposed as aforesaid in the said corporate authorities could be carried into execution.

52 The said plaintiffs further represent that said defendant claims title to a certain tract of said land hereinafter described, embracing said lots, and sets up said title in virtue of an alleged patent from the United States to himself, bearing date the 8th day of December, 1860, a copy whereof, marked B, is herewith filed and made a part of this complaint. That said alleged patent purports to be issued and based upon donation certificate No. 69, a copy whereof is herewith filed, marked C, and made a part of this complaint.

The plaintiffs show to the court that said certificate No. 69 contains a clause to the effect that Benjamin Stark having proven to the satisfaction of the surveyor general of Oregon the fact that such settlement was commenced on the first day of September, 1849, four years prior to the date of said certificate, and having in pursuance of the 7th section of the act of the 27th September, 1850, creating the office of the said surveyor general, established by two disinterested witnesses the fact of continued residence and cultivation required by the 4th section of said act: Now the plaintiffs allege that the said Benjamin Stark, contriving and intending to circumvent and defraud the plaintiffs and others, occupants as aforesaid, and who were the owners of large and valuable improvements upon said lots and elsewhere upon the said tracts so claimed by him as aforesaid under said alleged patent, and more particularly intending to deceive and defraud the plaintiff out the property in the complaint mentioned, falsely and fraudulently procured it to be established and proven before, and to the satisfaction of, the said surveyor general of Oregon, set-
53 tlement and cultivation as in and by said certificate and patent is alleged, the said defendant well knowing, as plaintiffs allege, the fact to be that at the date of said certificate he had not commenced his residence and cultivation within the boundaries of and upon said tract on or prior to the said first day of *of* September, 1849, and had not prior to the date of said certificate continuously for four years resided upon and cultivated said tract as by the 4th section of said act it is required.

The plaintiffs further say that the said alleged patent to the said defendant contains a reservation in favor of occupants of town lots, under said city entry and patent, which will fully appear on reference thereto, and that the said defendant well knew of said reservation before and at the date of said alleged patent, and accepted and procured said patent and reservation with the avowed intention of ratifying and confirming the title of occupants of said lots, and more especially that of the plaintiffs, held and improved as aforesaid, whereby the plaintiffs have been induced to rest quietly without suspicion of the intent of the defendant to deprive them of the said property. But now, so it is, the said defendant not only refuses to recognize and confirm to allow said reservation their title to said property, but it claiming the same by virtue of said patent, and is threatening to sue the plaintiffs for possession of said property, and denies
54 their right to the same under said city entry and patent, or the reservations in said defendant's patent contained, whereby the plaintiffs' right and title to said property is greatly clouded, and their peace and quiet of possession disturbed, jeopardized.

The plaintiffs therefore pray that the said patent, so unlawfully obtained, may be set aside and held for naught; or if the said patent shall appear to have been legal and binding, that in virtue of the reservations therein contained for the benefit of occupants of town lots, &c., amongst whom are the plaintiffs, the defendant may be decreed to release to these plaintiffs all his right and title to said lots, and forever enjoined from proceeding at law to recover the posses-

sion thereof, or otherwise disturbing the plaintiffs in the quiet and peaceable possession, and that plaintiffs have such other relief as to equity appertains.

CHAPMAN, *Att'y for Pl'ffs.*

STATE OF OREGON, *Multnomah county, ss:*

On this 30 day of October, 1864, A. M. Starr, one of the plaintiffs in the foregoing case, being sworn on oath, says the statements in the foregoing complaint are true, as he verily believes.

A. M. STARR.

Subscribed and sworn to before me this 30th October, 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

55 *Exhibit A.—Certificate No.* 19.

The United States of America to all to whom these presents shall come, greeting:

Whereas the corporate anthorities of the city of Portland, in Multnomah county, Oregon, in trust for the several use and benefit of the occupants thereof, according to their respective interests, under the town site act of Congress, approved the 23d May, 1844, entitled "An act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances," have deposited in the General Land Office of the United States a certificate of the register of the land office at Oregon City, whereby it appears that full payment has been made by the said corporate authorities of the city of Portland and interest, as aforesaid, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands," for the S.½ of the WS.¼ and river lot No. 8, of section thirty-four, in township one north, of range one east; river lot number five and six; the west half of the northwest quarter, and the northwest quarter, and the northwest quarter of the southwest quarter of section three, in township one south, of range one east, in district of lands subject to sale at Oregon City, Oregon, containing three hundred and seven acres and forty-nine hundredths of an acre, subject, however, to the decision of the Commissioner of the General Land Office, of 18th October, 1858, expressly reserving any valid claims which may exist in virtue of the several dona-
56 tions of Benjamin Stark, certificate No. 69, Daniel H. Lownsdale, certificate No. 1,022, William W. Chapman, certificate No. 68, and Stephen Coffin, certificate No. 67, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tracts have been purchased by the corporate authorities of the city of Portland, and in trust as aforesaid: Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such cases made and provided, have given and granted, and by these presents do give and grant, unto the said cor

porate authorities of the said city of Portland in trust for the several use and benefit of the occupants thereof, according to their several interests under said act of 23d of May, 1844, and to their successors and assigns in trust, as aforesaid, the said tracts above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said corporate authorities of the city of Portland, in trust for the several use and benefit of the occupants thereof, according to their respective interests under said act of 23d May, 1844, and to their successors and assigns, in trust as aforesaid, subject to the conditions and reservations herein expressed.

In testimony whereof, I, James Buchanan, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

57 Given under my hand, at the city of Washington, the seventh day of December, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fifth.

By the President:

[SEAL.]

JAMES BUCHANAN,
By J. B. LEONARD, *Sec'y.*
J. N. GRANGER,
Recorder of the General Land Office.

Recorded vol. 1, page 1, E. Rec'd for record, Sept. 12, 1862.

Exhibit B.

The United States of America to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office of the United States a certificate, numbered sixty-nine, of the surveyor general of the public lands in Oregon, whereby it appears that, under the provisions of the act of Congress approved the 27th day of September, 1850, entitled an "Act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey and to make donations to the settlers of the said public lands," the claims of Benjamin Stark, of Oregon, notification numbered 328, has been established to a donation of one half section or 320 acres of land, and that the same has been surveyed and designated as claim No. 45, being parts of sections 33 and 34, in township one north, range one east, and claim No. 47, being part of section three, in township one south, of range one east, according to the official plat of survey returned to the General Land Office by the surveyor general, being

58 bounded and described as follows, to wit: Beginning at a point sixteen chains and twenty-four links north of the southwest corner of section thirty-four, in township one north, of range one east; thence south seventy degrees and fifteen minutes east, forty seven chains and twenty-five links; thence north four degrees east, thirty-seven links; thence north twenty-five degrees east, five chains and forty-three links; thence north four degrees east, six chains and

fifty-two links; thence north eleven degrees east, five chains and forty-two links; thence north eighty-nine degrees and ten minutes west, fifty-three chains and fifty-seven links; thence south seventy degrees and fifteen minutes east, five chains and sixty-four links, to the place of beginning, in the Willamette land district, Oregon Territory, containing forty-eight acres and two hundredths.

Reservation.

And whereas it appears that the greater portion of this claim is covered by an entry made on the first day of February, 1858, by the corporate authorities of the city of Portland, which entry has been approved, and will be patented to the said corporate authorities in trust for the several use and benefit of the occupants thereof, according to their respective interests:

Now know ye that the United States of America, in consideration of the premises, and in conformity with the provisions of the act aforesaid, have given and granted, and by these presents do give and grant, unto the said Benjamin Stark the tract of land above
59 described, subject to such rights as may exist in virtue of the aforesaid entry for the city of Portland. To have and to hold the aforesaid tract, with the appurtenance, unto the said Benjamin Stark, and to his heirs and assigns forever, subject, as aforesaid, to the said entry for the city of Portland.

In testimony, whereof I, James Buchanan, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, this 8th day of December, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fifth.

By the President:

[L. S.]

JAMES BUCHANAN,
By J. B. LEONARD, *Sec'y.*
J. N. GRANGER,
Recorder General Land Office.

Recorded vol. 1, 464.

Exhibit C.—Donation certificate No. 69.—*Notification No.* 328.

Whereas, in conformity with the provisions of the 7th section of the act of Congress approved September 27th, 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the public lands," Benjamin Stark, of the county of Washington, in said Territory, claiming a donation right in virtue of the act aforesaid to the following tracts of the public lands, known and designated in the surveys and plots of the United States as the claim No. 45,
60 being parts of sections 33 and 34, T. 1 N., R. 1 E., and claim No. 47, being part of section 3, T. 1 S., R. 1 E., particularly bounded and described as follows: beginning at a point 16.34 chains north of the SW. corner of section 34, T. 1 N., R. 1 E.; thence S. 70°

15′ E., 47.25 chains; thence N. 4° E., 0.37 chains; thence N. 25° E., 5.43 chains; thence N. 4° E., 6.5 chains; thence N. 11° E., 5.42 chains; thence N. 89° 70′ west, 53.57 chains; thence S. 70° 15′ E., 5.64 chains, to the place of beginning; containing 48.02 acres, have proven, to the satisfaction of the surveyor general of Oregon the fact that such settlement was commenced on the first day of September, 1849, four years prior to the date hereof, and having, in pursuance of the requirements of the 7th section of the act aforesaid, established by two disinterested witnesses the fact of continued residence and cultivation required by the 4th section: Now, therefore, be it known that I, John B. Preston, surveyor general of public land in Oregon, do hereby, and pursuant to the 7th section of the act aforesaid, certify to the Commissioner of the General Land Office the facts aforesaid, accompanied by the evidence thereof, in order that a patent may be issued to the claimant for the tract of land described, as required by the 7th section of the act aforesaid, provided the said Commissioner shall find no valid objection thereto.

Given under my hand, at the office of the surveyor general of public lands in Oregon, this tenth day of September, 1853.

61 JOHN B. PRESTON,
Surveyor General of Public Lands in Oregon.

And afterwards, at a term of said circuit court, begun and held at the place aforesaid on the 14th day of November, 1864, before the said judge thereof, to wit, on the 21st day of November, 1864, being the seventh judicial day of said term, the following order was made by said court in the above-entitled cause, to wit:

Order.

Come the plaintiffs, by W. W. Chapman, their attorney, the defendant, by Grover & Page, and Wait & Kelley, his attorneys, and plaintiff moved the court for judgment against said defendant for want of answer, which said motion reads as follows, to wit:

Motion.

In the circuit court of the State of Oregon for Multnomah county.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, defendant.

The plaintiff moves the court for judgment for want of an answer.
CHAPMAN, *Att'y.*

Which said motion is overruled, and defendant has leave until Wednesday, 23d inst., to file answer herein. And defendant files demurrer to complaint as follows, to wit:

Demurrer.

In the circuit court of the State of Oregon, county of Multnomah.

A. M. and L. M. STARR
vs.
BENJ. STARK, defendant.

62 The defendant demurs to the complaint, and for grounds of demurrer assigns that the same does not state any facts constituting a cause of action or ground for relief in equity. 2d. Because there is no equity in the bill.

Nov. 8th, 1864.

GROVER & PAGE,
WAIT & KELLEY,
For Defendant.

Which said demurrer the court overruled; to which ruling of the court the defendant excepted.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, at said November term, 1864, of said circuit, to wit, on the 23d day of said month of November, it being the 9th judicial day of said term, the said defendant, by his said attorneys, appeared in open court and filed his answer to the above complaint, which said answer reads as follows, to wit:

Answer.

In the circuit court of the State of Oregon for the county of Multnomah, *ss:*

A. M. and L. M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant.
} Answer.

The defendant, for answer to the amended complaint herein, denies that the plaintiffs are the owners of lots numbered one, two, and four, in block numbered eighty-one, in the city of Portland, specified in the complaint.

Defendant denies that the plaintiffs or those under whom they
63 claim have been in peaceable possession of said lots since the 13th day of December, 1849. Defendant admits that the plaintiffs have been in possession of said lots for some time past, and that they have made large and valuable improvements upon some of said lots, but he avers that the said improvements thereon have been held and made with full knowledge on the part of the plaintiffs and all others that the defendant was the owner thereof in fee simple.

Defendant admits that a patent was issued to the city of Portland in the manner and form alleged, but denies that the same was issued according to law, or that the city of Portland holds said lands therein described in trust for the occupants of town lots in said city.

Defendant denies that the said plaintiffs or those under whom they claim have been occupants of said lots since the 13th of December, 1849, and deny that they are entitled to the benefits of the said city entry or patent. Defendant denies that he at any time contrived or intended to circumvent or defraud the plaintiffs, or any occupants of lots in said city of Portland, as alleged, or otherwise, or any person or persons who were the owners of large, or valuable, or any improvements upon said lots alleged in the complaint or elsewhere upon the said tracts of land mentioned in the complaint. Defendant denies that he intended to deceive or defraud the plaintiffs out of the property mentioned in the complaint, or that he falsely or fraudulently procured to be established and proved before and to the satis-
64 faction of the surveyor general of Oregon settlement and cultivation as in the certificate and patent alleged.

Defendant denies that he had not commenced his residence and cultivation within the boundaries of and upon said tracts of land in the certificate and patent and complaint described on or prior to the first day of September, 1849, and denies that he had not, prior to the date of said certificate, continuously for four years resided upon and cultivated said tract as by the fourth section of said act of Congress required.

Defendant denies that he accepted or received said patent with the intention of ratifying or confirming the title of occupants of said lots, or of the plaintiffs, or as held and improved by them or others, except as that they might hold or have improved under contracts under this defendant.

Defendant denies that plaintiffs have been induced to hold said lots or improve the same without, or hold the same quietly without suspicion of the intention of the defendant to deprive them of the
65 same. Wherefore defendant prays that he have a decree of this court dismissing said bill of complaint, and for his costs and disbursements, and for such other relief as is meet in equity and good conscience.

GROVER & PAGE,
WAIT & KELLEY,
Defendant's Attorneys.

COUNTY OF MULTNOMAH:

I, W. W. Page, being sworn, say that I am one of the defendant's attorneys, and that I verily believe the foregoing answer to be true, and that I make this verification because the defendant is not within this State.

W. W. PAGE.

Subscribed and sworn to before me Nov. 23d, 1864.

H. C. COULSON, *Clerk.*

Order.

And afterwards at said November term, 1864, of said circuit court, on the 30th day of said month of November, it being the 14th judicial day of said term, the following order was made by said court in the above-entitled cause, to wit:

On this day came the plaintiffs, by W. W. Chapman, their attorney, and the defendant, by Grover & Page, Wait & Kelley, and Strong, his attorneys, and defendant files answer herein as fol-
66 lows, to wit, (see the said answer above on page 62,) and plaintiffs moved the court for an order to close the taking of depositions by 25th December next, and files motion and affidavit as follows, to wit:

Motion.

STARRS
vs.
STARK.

The plaintiffs move the court to order that proofs and depositions close in this case by or before the 25th day of December next.

CHAPMAN, *Att'y.*

Nov. 25, 1864.

Affidavit.

In the circuit court of the State of Oregon for Multnomah county.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, def't.

A. M. Starr, one of the plaintiffs, being sworn, says that before the commencement of this suit the plaintiffs had begun the erection of a large building on said property in the bill mentioned, and had erected a stone wall as part of the foundation of a brick building, but they suspended work on account of the threats and grievances in the bill mentioned, and delay in the prosecution of said work has been and will be of great injury to pl'ffs.

A. M. STARR.

Subscribed and sworn to before me Nov. 25th. 1864.

H. C. COULSON, *Clerk.*

Which said motion the court overruled, and pl'ff filed mo-
67 tion to strike out part of answer as follows, to wit:

Motion to strike out from answer.

STARRS
vs.
STARK. } Ch'y.

The plaintiffs move the court to strike out as sham and irrelevant the following designated portions of the defendant's answer:

On page 1, from and inclusive of the word "lots," in the 10th, to and including 13th line.

On page 2, from and including word "but," on the 15th line, to and including 18th line.

On page 3, part of 21 and all of 22 line.

On page 2, from 22d to 28 line, inclusive.

On page 3, from line 2 to line 11 inclusive.

CHAPMAN, *Att'y.*

Which said motion the court sustained, and lines are drawn across the portion stricken out; and said motion as to the remainder of the answer not stricken out is overruled.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards at said November term of said court, to wit, on the 3d day of December, 1865, it being the 17th day of said term, the said plaintiffs, by their said attorney, appeared in open court and filed their certain replication in the above-entitled cause, which said replication reads as follows, to wit:

Replication.

In the circuit court of the State of Oregon for Multnomah county, in equity.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, defendant.

68 The plaintiffs, for replication to said defendant's answer, or so much as they are advised to reply unto, say that as to so much of defendant's answer as avers that the said improvements thereon (on said lots) have been held and made with full knowledge on the part of the plaintiffs and all others that the defendant was the owner thereof in fee simple, that the same is untrue.

CHAPMAN, *Att'y.*

STATE OF OREGON, *Multnomah county:*

On this 3d day of December, 1864, A. M. Starr, being sworn, says the statements in the foregoing replication are true as he verily believes.

A. M. STARR.

Subscribed and sworn to before me Dec. 3d, 1864.

H. C. COULSON, *Clerk.*

And afterwards, at a term of said circuit court, begun and held at the place aforesaid on Monday, the 13th day of February, A. D. 1865, before the court aforesaid, to wit, on the 27th day of February, 1865, being the 13th day of said term, the following order was made by said court in the above-entitled cause, to wit:

Order.

Come the plaintiffs, by Chapman & Holbrook, their att'ys, and the defendant, by Grover & Page and Wait & Kelley and Strong, his attorneys, and defendant, by his said att'ys, moves the court for continuance of this cause, and files motions and affidavits as follows, to wit:

69 *Affidavit of W. W. Page.*

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ff,
vs.
BENJAMIN STARK, defendant.

COUNTY OF MULTNOMAH:

I, W. W. Page, being sworn, say that I am one of the pl'ffs' attorneys, and that the defendant is now absent from this State, and is sojourning with his family in the State of Connecticut, and I verily believe the testimony of the defendant is material on the trial of the above-entitled suit; and I further swear that since the filing of the amended bill of complaint herein on the first of November, 1864, I have not been able to have any communication with the defendant, or hear from him except by telegraph and the receipt of a letter dated January 12th, 1865, about three days since. That by said letter, (which affiant is willing to exhibit to the court,) by some means, the defendant appears not to have received any letters from this affiant, in which I requested information as to the matters in issue in said suit since the same was found. And I further swear that the said letter is, as I believe, in answer to a telegraphic despatch sent to the defendant requesting his immediate departure for Oregon, which was sent early in the month of January last; and I am informed and believe that the defendant was detained in the Atlantic States by reason of the sickness of def't's brother, who has within a few past died;

70 and I verily believe that said Benj. Stark is making every preparation in his business to return to Oregon, and will return in the month of April next; and I verily believe that the said Stark will testify that from the year 1846 up to this time he has made Portland, Oregon, his home, and that he has not been absent during that time excepting on business, and temporarily, and more particularly in the year 1849; that he made Oregon his home, and resided on the tract of land including the lots in dispute, and was not absent excepting temporarily on business, and that while so absent he left large amounts of personal property on his donation claim, and also his agent to look after and manage the same. And I further swear that I do not know and am not advised of any other witness or witnesses by whom I can prove the same facts so fully, and this application is not made for delay, but that justice may be done.
done.

W. W. PAGE.

Subscribed and sworn to before me Feb'y 21st, 1865.
H. C. COULSON, *Clerk.*

Affidavit of W. S. Ladd.

In the circuit court of the State of Oregon for the county of Multnomah, *ss:*

A. M. and S. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, defendant,

I, W. S. Ladd, being sworn, say that heretofore, about the first day of January last, at the instance of the defendant's attorneys, I caused a telegram to be sent to said def't requesting that he
71 should come immediately to Oregon concerning the above-entitled suit, and from answers thereto and from letters since received from Benj. Stark, I verily believe that said Stark would have been in Oregon at the commencement of this term of said court, but that he was detained by the sickness of his brother, who has recently died; and I verily believe from my advices from him that he will be here before the next June term of this court. And I further swear that I have written to him, as also telegraphed to him to come to Oregon at the instance of his attorneys herein, who advised me that his personal presence was necessary, and that his testimony was also absolutely necessary. And I further swear that I believe said Stark was detained as aforesaid, and expected to have been here before the commencement of this term of the court.

[SEAL.] W. S. LADD.

[U. S. revenue stamp, 5 cts.]

Subscribed and sworn to before me this 21st day of February, 1865. 1865.

Witness my hand and notarial seal.

S. A. MORELAND,
Notary Public, State of Oregon.

Affidavit of Wm. Cree.

Circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR
vs.
BENJ. STARK.

STATE OF OREGON, *County of Multnomah, ss:*

I, Wm. Cree, being sworn, say that I have received a letter from Benjamin Stark, and verily believe from said letter as well as from other letters to Capt. Molthrop's family, that the said Stark
72 has been detained in the eastern States by the sickness of his brother, who has recently died, and I verily believe that said Stark will be here before the next June term of said circuit court.

WM. CREE.

Subscribed and sworn to before me this 21st day of February, A. D. 1865.

[SEAL.] BENJ. F. GOODWIN,
Notary Public, Oregon.

[U. S. revenue stamp, 5 cts.]

Therefore it is ordered by the court that this cause be, and is hereby, continued until May special term of this court, with leave to take proofs.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, at a special term of said circuit court, begun and held at the place aforesaid on Monday, the 8th day of May, A. D. 1865, in pursuance of an order of said court to that effect, before the said judge thereof, to wit, on the 12th day of May, 1865, being the 5th judicial day of said term, a certain order was made by said court in the above-entitled cause, which said order reads as follows, to wit:

Order.

Come the plaintiffs, by Chapman & Holbrook, their attorneys, and the defendant, by Wait & Kelley, Grover, Page & Strong, his attorneys, and defendant gave notice of filing certified copies of notifications, &c., (9 papers) to the filing of which exhibits plaintiffs, by their said attorneys, objected, and plaintiff moved the court to suppress parts of depositions taken and filed in this cause by defendant, which said motion reads as follows, to wit:

Motion to strike out of depositions.

In the circuit court of the State of Oregon for Multnomah county.

73 A. M. and L. M. STARR, pl'ff,
vs.
BENJ. STARK, def't.

The plaintiff, by W. W. Chapman and A. Holbrook, his attorneys, move the court to strike out all of defendant's depositions, and parts of depositions excepted to by the plaintiffs.

CHAPMAN & HOLBROOK, *Pl'ffs' Att'y.*

In the circuit court of the State of Oregon for Multnomah county.

A. M. and L. M. STARR
vs.
BENJAMIN STARK.

The plaintiff moves the court to exclude the exhibits this day filed, marked 9 exhibits, because the same are irrelevant, immaterial, and not the best evidence and not properly certified.

W. W. CHAPMAN.
A. HOLBROOK, *Pl'ffs' Att'ys.*

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR
vs.
BENJAMIN STARK.

Defendant moves to suppress the documents filed herein as evidence, attached to which is the certificate of H. C. Coulson, county clerk—

74 1st. Because such of said documents are immaterial and irrelevant.

2d. Because none of the same are properly proven or authenticated so as to be admitted in evidence.

3d. Because none of the acts of Sherman or Griffin are properly shown to be done with authority from the defendant.

WAIT, GROVER, PAGE & STRONG,
For Defendant Stark.

And defendant gave notice that defendant would read part of original complaint in this cause as evidence, and plaintiffs gave notice that they would read original records from Washington county, of which copies are filed herein; and by agreement of parties the cause is set for trial May 25th, 1865, with leave given to both parties to take proofs and file exhibits until that time.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards at said special term of said court, to wit, on the 25th day of May, 1865, being the 7th judicial day of said special term, the said court made in the said above-entitled cause the following order, to wit:

Order.

Come the plaintiffs, by Chapman & Holbrook, their attorneys, and the defendant appearing by Grover & Page and Wait & Kelley and Strong, his attorneys, and defendant, by his said attorneys, move the court for continuance of this cause, and file affidavits and motion as follows, to wit:

Affidavit of Wm. Strong.

In the circuit court of the State of Oregon for the county of Multnomah.

75 A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, defendant.

Wm. Strong, one of the attorneys for the defendant, being duly sworn, says that Benjamin Stark, the defendant in the above-entitled cause, is a material witness in his own behalf; that he is advised by said Stark, and believes, that he will testify that from the 1st day of September, 1849, until long after the 10th day of September, A. D. 1860, he was a resident upon the tract of land described as his donation claim in the pleadings in this case, embracing the land in controversy; that all his absences from said residence during the period aforesaid were temporary, and during such absences he always entertained a fixed intention to return, and never intended to abandon such residence. And affiant is further advised that he, said Stark, will testify that he called the attention of his attorney to a description of his residence, (stating it to be in San Francisco,) which is contained

in a power of attorney given by him to George Sherman, and that at that time he informed his attorney that it was a matter of no account, amounting at most only to the fact that he was then present in San Francisco.

WM. STRONG.

Subscribed and sworn to before me, May 25th, 1865.

H. C. COULSON, *Clerk.*

Which said motion for continuance the court overruled; and the parties being ready for trial, and the court having heard a
76 part of the allegations and proofs in this cause, the same is continued until to-morrow morning, at ten o'clock.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards at said special term of said court, to wit, on the 26th day of May, 1865, being the 8th judicial day of said term, the following order in said above-entitled cause was made by said court, to wit:

Order.

Come the parties, by their respective attorneys as heretofore, and the court having heard the conclusion of the proofs, this cause is continued until to-morrow, at ten o'clock.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards at said special term of said court, to wit, on the 27th day of May, 1865, being the 9th judicial day of said term, the following order in said above-entitled cause was made by said court, to wit:

Order.

Come the parties, by their respective attorneys as heretofore, and the court having heard the argument of counsel, this cause is taken under consideration, and decision herein reserved.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, at a term of said circuit court, begun and held at the place aforesaid on the 12th day of June, 1865, before the said judge thereof, to wit, on the said 12th day of said month of June, 1865, it being the 1st judicial day of said term, the follow-
77 ing order and decree was made by said court in the said above-entitled cause, to wit:

Order.

This cause having been heard at the May special term of this court upon the engrossed amended complaint, answer, replication, exhibits, and proofs, and having been argued by counsel on both sides, and the decision reserved by the court, now at this day, the

court being sufficiently advised in the premises, and because it appears to the satisfaction of the court that the plaintiffs are entitled to the relief prayed for by them, it is ordered, adjudged, and decred by the court that the patent under which it is alleged the defendant claims title to the premises in dispute, dated the 8th of December, 1860, copy of which is exhibited with the complaint, be, and the same is, declared as against the plaintiffs void and to be taken for naught, and that the defendant, and all others claiming under, through, or by him, be, and they are, perpetually enjoined and prohibited from ejecting and turning out, and from commencing any suit to eject and turn the said plaintiffs, their heirs or assigns, out of the possession of the parcels of land described in the complaint, being lots numbered one (1,) two (2,) and four (4,) in block numbered eighty-one (81,) in the city of Portland, Multnomah county, Oregon, as known and designated upon the map of said city, or any part thereof. It is further ordered and adjudged that the defendant pay the costs and disbursements herein made, and that execution issue therefor; to which order and decision of the court defendant, by his said
78 attorney, excepted.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, to wit, on the 14th day of June, 1865, the said plaintiffs in said above-entitled cause, by their said attorney, filed in the office of the clerk of said court the following bill of disbursements in said cause, to wit:

Bill of disbursements.

In the circuit court for the county of Multnomah, State of Oregon, in equity.

A. M. and L. M. STARR, plaintiff,
vs.
BENJAMIN STARK, defendant.

Statement of disbursements claimed in the above-entitled cause, viz:

Clerk's fees, including depositions and exhibits	$135 25
Sheriff's fees	25 45
Trial fees	6 00
Stamps	50
Advertising	18 00
Depositions	
Attorney's fee	5 00
Witnesses	13 00
Total	203 20

STATE OF OREGON, *County of Multnomah, ss:*

A. M. Starr, being duly sworn, says he is one of the pl'ffs in the above-entitled cause; that the disbursements set forth above have been necessarily incurred in the prosecution of this suit,
79 and that they are entitled to recover the same from the def't.

A. M. STARR.

Subscribed and sworn to before me this 14th day of June, 1865.

H. C. COULSON, *Clerk.*

And afterwards, at said June term, 1865, of said court, to wit, on the 30th day of June, 1865, being the 17th judicial day of said term, the said judge thereof, in open court, filed the following decision, findings of facts, and conclusions of law in the said above-entitled cause, to wit:

Findings, &c.

The circuit court of the State of Oregon for the county of Multnomah, in chancery.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, def't.

Submitted to the court, and the following findings upon the pleadings, depositions, exhibits, and argument of counsel:

Facts.—That the defendant had, during the time between Sept., 1849, and Sept., 1850, a mercantile house on the claim of John H. Couch, adjoining the tract claimed by defendant, a mercantile house in San Francisco, California, and one in New York, in copartnership with other persons; was himself a merchant and in actual charge, and the managing partner of the house in San Francisco. It is not found that the defendant had any house, residence, or place of
80 business upon the tract covered by his notification and patent prior to the fall of 1850.

That up to 1851 the defendant was engaged in mercantile business and commerce between Portland, San Francisco, and New York, but spent the greater part of his time at San Francisco between Sept., 1849, and Sept., 1850.

That the defendant was in Portland, Oregon, in June, 1850, and in August, 1850. One Sherman, an agent of the defendant, commenced the construction of a building upon the tract described in defendant's patent, which was afterwards used as an office, and was occupied by defendant's agent; but it is not found that defendant himself ever occupied this building, if at all, prior to the October, 1850.

That defendant left Oregon in October, 1850, and was absent in the Atlantic States and in California till some time in 1851, but with the intention of returning to Oregon and of making a home on the tract named in his patent.

That prior to his departure in October, 1850, the defendant caused a dwelling-house to be erected on the tract, which was leased to a tenant and occupied by a tenant till def't's return in 1851, and occupied by def't himself as a boarding place or a residence from his return till 1861.

That portions of this tract were, prior to March, 1850, divided into lots, and were occupied at that time, and have been up to the commencement of this suit occupied for purposes of trade and commerce.

That a part of the premises in controversy in this suit, to wit, lot 2, was occupied by the plaintiffs in October, 1850, and has
81 continued to be occupied by them till the commencement of this suit for purposes of trade or manufacturing of tin ware.

That the other portions of the premises in dispute have been occupied by and in the actual possession of the plaintiffs, and their grantors claiming adversely to the defendant, since some time in the former part of 1850.

That the plaintiffs were in possession of all they claim in the complaint on the 7th of December, 1860.

As conclusions of law.—That no settlement or cultivation by the defendant was made or commenced as required by the act of 27th Sept., 1850, prior to Sept. or October, 1850; and said Stark, at the date of his patent certificate, had not complied with the requirements of the donation act, and the patent issued to him on the 8th December, a copy of which is annexed to the bill, is void as against the plaintiffs, and should be set aside.

That no appropriation of the land claimed by the defendant, so far as the evidence in this case shows, had been made prior to Feb'y, 1858, when the city entered the tract covered by their patent, and the entry by the city authorities and the patent issued to the city of Portland is valid.

That the plaintiffs are entitled to a perpetual injunction restraining the defendant from putting pl'ffs out of possession, and from commencing any suit to eject or turn out the pl'ffs from the
82 premises described in the complaint, or any part of the same.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

June, 1865.

And afterwards, to wit, on the 15th day of July, 1865, the said defendant, by his said attorneys, filed in the office of the clerk of said court the following appeal bond, notice of appeal, and bill of exceptions in the above-entitled cause, to wit:

Appeal bond.

In the circut court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, respondents,
vs.
BENJAMIN STARK, appellant.

Whereas the appellant has appealed from the judgment and decree rendered in *in* the above-entitled suit to the supreme court of the State, now, therefore, we, Benjamin Stark, defendant, and William Cree, surety, undertake and agree that the appellant will pay all damages, costs, and disbursements which may be awarded against him on the appeal; and if the judgment or decree, or any part thereof be affirmed, the appellant will satisfy it so far as affirmed.

BENJ. STARK,
By his att'y in fact, W. S. LADD.
WM. CREE.

COUNTY OF MULTNOMAH:

83 I, William Cree, being sworn, say that I am a resident and freeholder within the State of Oregon, and that I am worth the sum of one thousand dollars over and above all debts and liabilities, and property exempt from execution.

WM. CREE.

Subscribed and sworn to before me this 14th day of July, 1865. Witness my hand and notarial seal.
[SEAL.] BENJ. F. GOODWIN, *Notary Public, Oregon.*

Notice of appeal.

In the circuit court of the State of Oregon for the county of Multnomah, in chancery.

A. M. and L. M. STARR, respondents,
vs.
BENJAMIN STARK, appellant.

To A. M. and L. M. Starr, respondents, and H. C. Coulson, clerk of said court:

Take notice that Benjamin Stark, appellant, appeals to the supreme court of the State of Oregon, from the whole decree entered in the circuit court of the State of Oregon for the county of Multnomah, on the 12th day of June. A. D., 1865 at the last regular June term of said circuit court in favor of the A. M. and L. M. Starr against the said Benjamin Stark for one hundred and eighty-one $\frac{40}{100}$ dollars costs and determining the title to lots one, two, and four, in block eighty-one, in the city of Portland, in said county.

Bill of exceptions.

STATE OF OREGON, *Multnomah county, ss:*

84 I, Aaron E. Wait, one of the attorneys of the said Benjamin Stark, in said suit in said circuit court, do hereby certify that I have examined the rulings, orders, and decrees in said suit, and that they are substantially erroneous in the following particulars, to wit:

1st. The court erred in overruling the application of the defendant to order the certifying of said suit to the United States circuit court for the district of Oregon.

2d. The court erred in overruling the demurrer to amended engrossed bill.

3d. The court erred in striking out that part of the defendant's answer to the plaintiffs' amended engrossed complaint, beginning with the word "but" in the 2d line of the 3d page of said answer, and ending with the word "defendant" in the eleventh line of said page.

4th. The court erred in its findings of facts.

5th. The court erred in its conclusions of law.

6th. The court erred in decreeing the patent of the defendant to be void as to the premises in controversy and as to the plaintiffs and those claiming under them.

7th. The court erred in finding and in decreeing that the plaintiffs were entitled to the premises in controversy as alleged in their amended engrossed bill of complaint.

8th. The court erred in decreeing that the defendant be enjoined from putting the plaintiffs out of possession of said premises, and from instituting suit for that purpose.

9th. The court erred in not dismissing said amended engrossed complaint, with costs and disbursements against the plaintiffs.

85 10th. The court erred in making any final decree in said suit against the defendant therein.

Dated at Portland, July 13th, 1865.

AARON E. WAIT.

GROVER & PAGE, and
STRONG, and WAIT & KELLEY,
Att'ys for Appellants.

On which said notice of appeal and bill of exceptions is the following indorsement, to wit:

STATE OF OREGON, *County of Multnomah, ss:*

I do hereby return that on this 14th day of July, 1865, I served the within notice upon the within named A. M. Starr and L. M. Starr, by delivering to them in person a true and correct copy of the same at the city of Portland, in the county of Multnomah, in the State of Oregon.

Fees, $3 20.

Dated at Portland, July 14, 1865.

JACOB STITZEL,
Sheriff of Multnomah county,
By T. M. ARNOLD, *Deputy Sheriff.*

86 Costs as per bill of disbursements above set forth.. $203 20
This transcript and certificate 65 00

268 20

STATE OF OREGON, *Multnomah county, ss:*

I, H. C. Coulson, clerk of the circuit court of the State of Oregon, for said county, do hereby certify that I have compared the foregoing transcript with the original, and that it is a correct transcript therefrom, and of the whole of such original pleadings, exhibits, journal entries, orders, and decrees, as the same appears of record and on file at my office and in my custody. And I further certify that the depositions and exhibits hereto attached are all the depositions or testimony filed in said cause.

In testimo ny whereof, I have hereunto set my hand and affixed the seal of said court this 31st July, 1865.

[SEAL.] H. C. COULSON, *Clerk.*

[5-ct. rev. stamp.]

Indorsement: A. M. and L. M. Starr *vs.* Benj. Stark, No. 36. Filed in the supreme court Sept. 2, 1865. R. Williams, clerk.

87 To Josiah Failing, S. Coffin, Wm. Warren, Shery Ross, F. De Witt, A. M. Starr, A. B. Hallock: In the name of the State of Oregon you are commanded to appear in the circuit court of the State of Oregon, for the county of Multnomah, at the clerk's office of said county, in Portland, on the 19th day of Dec'r. 1864, at 10 o'clock a. m., to give evidence in a cause wherein A. M. and L. M. Starr, plaintiff, and Benj. Stark, defendant, on the part of the pl'ffs.

Witness my hand and seal of said court this 14 day of Dec., A. D. 1864.

[SEAL.] H. C. COULSON, *Clerk.*

On the foregoing is the following indorsement:
A. M. and L. M. Starr *vs.* Benj. Stark. Sub. for pl'ff.

STATE OF OREGON, *Multnomah county:*

I hereby certify that on the 16 day of Dec., 1864, I served the writ on Sherry Ross, F. De Witt, J. Failing, A. M. Starr, and A. B. Hallock, also S. Coffin, by reading the same to each in person, in
88 Portland.

My fees, $4 90.

JACOB STITZEL, *Sheriff,*
By F. M. ARNOLD, *Dept.*

In the circuit court of the State of Oregon for Multnomah county.

A. M. and L. M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant. } Suit in equity.

To Wait & Kelley, Paige & Grover, and William Strong, attorneys for the defendant in the above-entitled suit:

You are hereby notified that on Monday, the 19th day of December, 1864, at the hour of 10 o'clock a. m. of said day, and at the office of the clerk of said county, before the clerk thereof or his authorized deputy, I shall proceed and continue from day to day *to day* until completed, to take the depositions of J. Failing, Stephen Coffin, William Warren, Sherry Ross, F. De Witt, and Ad. M. Starr, to be read as evidence on the hearing of said suit on the part of the plaintiffs.

Portland, December 14, 1864.

W. W. CHAPMAN, *Plaintiffs' Attorney.*

89 On the foregoing is the following indorsement:

A. M. and L. M. Starr *vs.* Benj. Stark. Notice of depositions. Sheriff's fees, $2 70.

STATE OF OREGON, *Multnomah county, ss:*

I hereby certify that I have served the within notice on Wait & Kelley, Grover & Page, and William Strong, attorneys for the defendant, in the city of Portland, in Multnomah county, Oregon, on the 15th day of December, A. D. 1864, by delivering to each of them a copy thereof in person.

Portland, December 17, 1864.

JACOB STITZEL,
Sheriff of Multnomah county, Oregon.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR
vs.
BENJAMIN STARK.

In pursuance of the notice hereto attached, the depositions
90 of Stephen Coffin, William Warren, *et al.*, were taken at the office of the clerk of said county, before me, H. C. Coulson, county clerk, commencing at ten o'clock a. m., December 19th, 1864. Plaintiffs appearing by W. W. Chapman, their att'y, and the defendant appearing by A. E. Wait and W. W. Page, his att'ys.

F. De Witt, being first duly sworn, testified as follows:

Question 1. State your age and residence.
Answer. About forty-seven; residence, Portland, Oregon.
Question 2. Are you acquainted with the parties to this suit?
Ans. I am, sir.
Ques. 3. How long have you resided in Portland?

Ans. Came to Portland, 1845; left in August, 1852; returned again in March, 1858; have been here ever since.

Question 4. Were you acquainted with the residence of Benjamin Stark, from the first of September, 1849, till the time that you removed from Portland, 1852? and if so, state where he resided, and, if you know, in what house.

(Objected to as immaterial.)

Ans. Partly. In the fall of 1850, he stayed in my own hotel. Then he removed from there to his own building. It was one
91 of the square-topped buildings on block where I live.

Ques. 5. State who owned the house and lot you resided in.

(Objected to as immaterial.)

Ans. Myself.

Ques. 6. State, if you know, where Benjamin Stark resided prior to his coming to board with you.

(Objected to as above.)

Ans. I am not able to say.

Ques. 7. State if you was then acquainted with that part of the Portland land claim lying between Stark tract and the southern boundary of the Couch claim.

(Objected to as above.)

Ans. I was.

Ques. 8. State, if you can, who the residents were of that particular tract prior to the time when you say Stark boarded with you.

(Objected to as above and as leading.)

Ans. I was one myself. Wm. Warren and another William Warren, Starr brothers, the plaintiffs, Josiah Failing and Lou. Sherlock. There may have been a few more, but I cannot now think of their names.

Ques. 9. State whether Benjamin Stark was or was not among the number that resided upon that tract prior to the time when
92 you say he came to reside with you.

(Objected to as above and as leading.)

Ans. I presume he was.

(Objected to as not responsive to the question by the plaintiff.)

Ques. 10. State what reason you have to presume he was.

(Objected to as leading.)

Ans. I know the man was around there.

Ques. 11. State, if you know, how long he had been round here at a time.

(Objected to as immaterial and leading.)

Ans. I could not say that exactly.

Ques. 12. Do you know of his having had a house upon that tract? and if so, did he reside therein?

(Objected to as last above.)

Ans. He had a house, but I am not able to say if he resided there.

Ques. 13. State, if you know, who occupied or done business in that slaughter-house from Dec. 1849, till its removal.

(Objected to as last above.)

Ans. I think the Starr boys, but when they came I can't say.

Ques. 14. State whether you are acquainted with Hastings and Baker in the winter of '49–'50.

(Objected to as immaterial.)

Ans. I was.

93 Ques. 15. State, if you know, who was in possession of that house during the year 1849.

(Objected to as above.)

Ans. I am not able to say. I was running a vessel between here and San Francisco.

Ques. 16. Did you know or did you see during the time that you was running the vessel, Benjamin Stark in San Francisco?

(Objected to as last above.)

Ans. I did; he came there from the States.

Ques. 17. How late in '49 did you see him in San Francisco?

(Objected to as last above.)

Ans. It was some time in the spring; could not tell the month.

Ques. 18. How often did you run a vessel in that year to San Francisco?

(Objected to as last above.)

Ans. I think I made two and a half or three; can't exactly say which.

Ques. 19. State, if you recollect, how late your last trip was.

(Objected to as last above.)

Ans. Some time in the fall of 1849.

Ques. 20. State with what you was generally freighted.

(Objected to as last above.)

Ans. Lumber generally.

Ques. 21. State whether you was the owner of the vessel,

94 or if not, who was, and to whom consigned, if to anybody.

(Objected to as last above.)

Ans. Crosby & Smith were first owners; afterwards, De Witt & Menzies. The consignee was most of the time Robert Parker.

Ques. 22. State whether any part of your cargo, or of either of them, was or not consigned or shipped to Couch & Co., or to Couch & Stark, or to Benjamin Stark.

(Objected to as last above.)

Ans. I am not able to say, as my partner run the vessel at that time.

Ques. 23. State, if you know, whether or not there was a business house in San Francisco of Couch & Company, or in which Benjamin Stark was a party.

(Objected to as last above.)

Ans. I think there was a house of Couch & Company, but had no knowledge of who the parties were. I am not able to say who the parties were in San Francisco. I knew nothing about it but by hearsay.

Ques. 24. State who was generally understood to be the partner in San Francisco.

(Objected to as immaterial, leading, and calling for hearsay evidence.)

Ans. I am not able to say who was the firm.

95 Ques. 25. State whether or not it was generally understood that Benjamin Stark was connected with that firm in San Francisco.

(Objected to as last above.)

Ans. It was understood that he was.

Cross-examination by defendant:

Ques. 1. How many times did you see the defendant, Stark, in San Francisco, in 1849?

Ans. Of my knowledge only once.

Ques. 2. State, if you know, whether or not he was on his way from the States to Portland, Oregon?

Ans. He was.

Examination direct resumed:

Ques. When did he arrive in Oregon after you saw him in San Francisco?

Ans. I am not able to say.

F. DE WITT.

Sherry Ross, first being duly sworn, testified as follows:

Ques. 1. State your age and residence.

Ans. About 39; residence, Portland, Oregon.

96 Ques. 2. Are you acquainted with the parties to this suit?

Ans. I am.

Ques. 3. State how long you have resided in Portland or vicinity, and whether in the years '49, '50 you were acquainted with that part of the Portland land claim lying between Stark street and the Couch claim.

(Objected to as immaterial and leading.)

Ans. I have resided here and in vicinity between seventeen and eighteen years. I was acquainted with the land claim.

Ques. 4. State if you know the residents on that particular tract; and if so, who were they as near as you can recollect?

(Objected to as above.)

Ans. I cannot now name any one.

Ques. 5. State whether you knew F. DeWitt, William Warren, and the Starr brothers, and where they resided in the years 1849 and 1850?

(Objected to as above.)

Ans. I knew DeWitt and William Warren in 1849 and '50. My recollection is that they both lived between Stark street and Couch's addition. I do not recollect the Starr boys as far back as that date.

Ques. 6. State what you know of the residence of Benjamin Stark in 1849 and '50, and whether on not he resided on what is

97 known as the Stark tract between Stark street and the Couch claim.

(Objected to as above.)

Ans. I have no recollection of his residing there at that time. I have known Benjamin Stark since 1846. For several years after my first acquaintance he was engaged aboard of vessels, and was here during

the time those vessels lay in this port. In 1849 and '50 my understanding was he was in California. In the winter of 1849–'50, or in the spring of 1850, Daniel H. Lownsdale went to San Francisco to transact business with him in regard to this the Portland land claim.

(Ans. objected to by defendant's att'y, and especially so much thereof as relates to understanding, hearsay, and the going of Lownsdale to San Francisco.)

Ques. 7. State, if you know, when Benjamin Stark arrived in Portland from September, 1849, till May, 1850.

(Objected to as immaterial and leading.)

Ans. I do not know of his arriving during that time.

Ques. 8. State when he did first arrive in Portland after September, 1849.

(Objected to as above.)

Ans. My recollection is that he arrived during the summer or fall of 1850.

Question 9. State whether or not, if Benjamin Stark had
98 been a resident of said tract, between Stark street and Couch claim up to the summer of 1850, you would have known it.

(Objected to as above.)

Ans. My opinion is that I would.

Question 10. When did you first know him to be a resident that of tract?

(Objected to as above.)

Ans. I cannot recollect of his living here before 1851.

Ques. 11. State whether you are acquainted with the building known as "the slaughter-house;" and if so, describe it briefly, and state who occupied or used it from September, 1849, until the fall of 1850.

(Objected to as above.)

Ans. It was a plank temporary house; I am not able to say who did occupy it.

Ques. 12. Do you remember anything of a cargo of salt being stored in it, or its having the sign of "storage" over the door?

(Objected to as above.)

Ans. My recollection is that it was used for a warehouse.

Question 13. Were you acquainted with the firm of Hastings & Baker, of Portland? and if so, have you any knowledge of their connexion with it?

(Objected to as above.)

Ans. I was acquainted with the firm of Hastings & Baker or Baker
& Hastings, but don't recollect of their having anything to do
99 with it.

Question 14. State whether the so-called slaughter-house, from September, 1849, till the summer of 1850, was in a condition to be or was used as a residence.

(Objected to as above.)

Ans. It would not have been a very good residence; if it was so used I have no recollection of it. My recollection is that it was not so used.

Cross-examination:

Question 1. When did you first come to Portland to reside?

Ans. In the fall of 1846.

Ques. 2. Who was then the claimant or claimants of the Portland land claim?

(Objected to by plaintiffs as irrelevant.)

Ans. A man known by the name of Frank Pettigrow.

Ques. 3. Was anybody else a claimant of the Portland land claim at that time?

(Objected as above.)

Ans. No person that I knew of.

Ques. 4. How long did you continue to reside in Portland from the fall of 1846?

Ans. Until the fore part of January, 1848.

Ques. 5. Where did you then go?

Ans. I went to the Dalles; to the Walla-Walla valley, and was in the volunteer service in the Cayuse war, five or six months; but my residence was in Portland during the whole time.

100 Ques. 6. How long did you continue to reside in Portland after you returned from the Cayuse war?

Ans. Until September, 1848.

Ques. 7. Where did you then go?

Ans. California gold mines.

Ques. 8. How long did you remain in California?

Ans. Was back in Portland in September, 1849.

Ques. 9. Where did you then go?

Ans. I remained in Portland until during the winter of 1849 and 1850; I then boarded across the river, and claimed my residence on a land claim one mile from the river. During the time I was keeping the Portland ferry.

Ques. 10. Where did you next go?

Ans. The next place was at a place known as Ross's island. This was during the winter of 1850.

Ques. 11. How long did you reside upon Ross island from 1850, and how far was your residence on that island from Portland?

Ans. I resided there until the spring of 1855; residence was about two miles from Portland.

Ques. 12. Do you know that the defendant, Stark, did not reside in Portland in 1849 or 1850?

(Objected to, because it does not discriminate between that part which may be relevant and that part which is not relevant.)

Ans. My recollection is that he did not; he may have been
101 here during that time, but did not live here, or I should have known it.

Ques. 13. Might he not have lived here while you were in California, and you not known it?

Ans. He would have had to have been here prior to September, 1849.

Ques. 14. Do you know all of the persons that resided in Portland in 1849 and 1850?

Ans. I do not.

Ques. 15. May not many persons have resided here in those years and you not known it?

(Objected to as above.)

Ans. I don't think there was very many; Portland was a very slim place when I came back.

Ques. 16. Did you ever see the defendant, Stark, in California?

Ans. I have no recollection of seeing him.

Ques. 17. Do you know anything of his residence in California, except what you know by hearsay?

Ans. Nothing.

Ques. 18. Do you know anything of Lownsdale going to California to do business with Stark, except from hearsay?

Ans. I know nothing only from hearsay.

Ques. 19. How many times did you see the defendant, Stark, in Portland in 1849?

(Objected to as irrelevant.)

Ans. I don't recollect of seeing him in Portland in 1849, though he may have been here.

Ques. 20. How many times did you see him in Portland in
102 1850?

Ans. I don't recollect the number of times, but think I saw him during that time.

Examination-in-chief:

Ques. 22. State briefly and connectedly your residence from 1848 till the spring of 1851.

Ans. In September, 1848, I went to California by land; in 1849 I was in Portland, and crossed the river and upon Ross's island; I was the greatest portion of the time in Portland during the day time.

Ques. 23. When you say persons might have resided in 1849 and 1850 that you did not know, would you not have known it if Benjamin Stark had resided here or on the tract mentioned from the first of September, 1849, to the fall of 1850?

(Objected to as immaterial and leading.)

Ans. Yes, I would have known it.

Cross-examination resumed:

Ques. 1. How often did you go upon what is known as the Stark tract, from the fall of 1849 to the fall of 1850?

Ans. I don't know how often, but was on that tract a great many times, I presume.

103 Ques. 2. Was you over any considerable portion of that tract at any time during that period?

Ans. I have been at Bill Warren's and DeWitt's residence several times, and out in the woods several times.

Ques. 3. How many times were you out in the woods during that time?

Ans. I could not say positively.

Ques. 4. Were there any houses on that tract except the Warren

and DeWitt houses at that time or in the fall of 1849 and 1850? and if so, state what.

Ans. There was a school-house, and one put up by Loomis in 1850 or 1851; and old man Warren started to put up one as a public house, and there may have been other shanty houses put up during 1850, but don't recollect.

Examination-in-chief resumed:

Ques. 1. State whether Stark resided in any of the houses you that you have mentioned.

Ans. No.

Cross-examination resumed:

Ques. 1. How do you know that Stark did not reside in any of those houses from the fall of 1849 to the fall of 1850?

104 Ans. The reason why I say that he did not reside in any of those houses is that if so I should have seen him frequently in town, which I did not.

Ques. 2. Did you ever have any business transactions with defendant, Stark?

Ans. None that I recollect of.

Ques. 3. When in your deposition you have made use of the word residence, what do you mean as comprehending residence?

Ans. I mean that a man to have a residence is to live there most of his time.

Examination-in-chief:

Question 1. State whether you have any knowledge of a firm called Couch & Co., and whether Benjamin Stark was a party to said firm.

(Objected to as immaterial and leading.)

Ans. Nothing more than hearsay.

Ques. 2. State all you know personally, or to be generally understood in the community about Portland, in reference to Stark's connexion with the house in San Francisco.

(Objected to as immaterial and as seeking to call out hearsay evidence.)

Ans. I know there was a company known as Couch & Com-

105 pany here. I understood that Stark was connected with that company, and was in San Francisco.

Ques. 3. State whether you ever saw an advertisement in *in* relation to that firm; and if so, what it was.

(Objected to as leading, immaterial, and not the best evidence.)

Ans. I have no recollection of ever seeing it.

SHERRY ROSS.

By consent of parties the taking of depositions on the part of the plaintiff was adjourned until to-morrow morning at ten o'clock.

Dec. 19, 1864.

TUESDAY MORNING, *Dec. 20th*, 1864.

At 10½ o'clock a. m. the taking of depositions on part of plaintiff resumed.

Stephen Coffin, being first duly sworn, testified as follows:

Question 1. State your age and residence.

Ans. I am 57; reside in Portland.

Ques. 2. Are you acquainted with the parties to this suit?

Ans. I am.

Ques. 3. State how long you have resided in Portland.

106 Ans. Since April, 1849.

Ques. 4. Are you acquainted with the tract of land in Multnomah co. known as Stark's tract? If so, how long?

Ans. I am; since March, 1849.

Ques. 5. Do you know the particular boundaries of that tract? If so, state them briefly.

Ans. I think I do. The tract lies north of Stark street, on what is called the Portland land claim, and south of Couch's claim.

Ques. 6. How long have you been acquainted with Benjamin Stark?

Ans. I think since the summer of 1849.

Ques. 7. State when you knew him first, if ever, as a resident o Portland.

(Objected to; question withdrawn.)

Ques. 8. State whether Benjamin Stark has ever been a resident of Portland; and if so, how long, and all you know about it.

(Objected to.)

Ans. He has been a resident of Portland, but how long I don't now remember.

Ques. 9. State whether or not you were acquainted with what is now known as the Stark tract in September, 1849, and from that time until 1851.

(Objected to.)

Ans. I was.

107 Ques. 10. State whether Benjamin Stark was or was not a resident of that tract at any time from the first of September, 1849, to the first of January, 1851; and if he was, state when and all about it.

(Objected to.(

Ans. The first that I knew of Mr. Stark residing on that tract I think was in the latter part of 1850, or it may have been the fore part of 1851.

Ques. 11. State whereabouts and in what house he resided at the time that you mentioned.

(Objected to.)

Ans. I do not now recollect. Mr. Stark was a single man, and I think he boarded out, but had an office; but could not now state where his office was situated.

Ques. 12. State, if you can, whether Benjamin Stark did or did not reside upon that tract at any time from the first of September, 1849, to the first of June, 1850.

(Objected to.)

Ans. I can't answer that question. I don't remember the time when he came up here. I have some memorandums at home by which I can arrive at the date.

Ques. 13. State, if you can, whether Benjamin Stark did or
108 did not reside upon that tract called the Stark tract at any time from the first of September, 1849, to the 13th of April, 1850.

(Objected to.)

Ans. He did not in person.

Ques. 14. State whether you were or not acquainted with the inhabitants of that tract during the time last mentioned; and if so, would you have known if Benjamin Stark had resided amongst them?

(Objected to.)

Ans. I was acquainted with the inhabitants of that tract, I presume, and I am very confident that Mr. Stark was not residing there.

Ques. 15. From the first of September, 1849, till the fourth of July, 1850, were you at any time acquainted with a business house known as Couch & Company? and if so, state how many of the firm you were acquainted with, if any, and where they resided.

(Objected to.)

Ans. I was acquainted with the house. The members of the firm as far as I now recollect were Sherman, Couch and Stark. I was acquainted with Mr. Couch and Mr. Stark. Mr. Sherman I was not ac-
109 quainted with. I think he resided in the States. Mr. Couch resided on what is now called Couch's addition to Portland, and Mr. Stark in San Francisco.

Ques. 16. State the particulars, as near as you can, of his residence in San Francisco.

(Objected to.)

Ans. I was at the house of Stark, Sherman & Couche's, and in their counting-room in San Francisco. There may have been other parties interested in the firm, though I don't now remember.

Ques. 17. State if you ever saw an advertisemet of this firm; and if so, what in and its contents, as near as you can.

(Objected to.)

Ans. I have an indistinct recollection of having seen an advertisement in the papers of the firm spoken of before. It is a long time ago, and I cannot recollect the particulars, but I think that it stated that they were doing business in Portland, San Francisco, and New York. John H. Couch, of Portland; Benjamin Stark, of San Francisco, and Sherman, of New York. I am now speaking from impression, and may be mistaken.

Ques. 18. State what you knew of a house called the "slaughter-house," on said tract.

(Objected to.)

110 Ans. There was a slaughter-house on the bank of the river, located at point now designated as block 81.

Ques. 19. State all you know about the possession and occupancy of that house from the first of September, 1849, to the fall of 1850.

(Objected to.)

Ans. From September to December, 1849, it was used as a warehouse by D. H. Lownsdale and myself. In December, 1849, W. W. Chapman purchased an interest. It was continued to be used as a warehouse till some time in 1850. I don't now recollect the time. I had it rented from Lownsdale and Chapman, and stored a large amount of salt and other goods in it. Whilst I was occupying the building the ownership of that block and house changed hands, by deed from Lownsdale, Coffin, and Chapman to W. W. Chapman, dated March, 1850. The records will show correct dates of deed.

Ques. 20. State, if you can, of whom you received the possession of that house in the first place.

(Objected to.)

Ans. I received a deed and possession from Dan'l H. Lownsdale, of the Portland land claim, in March, 1849, including the
111 slaughter-house referred to by my former answer.

Ques. 21. From the 13th December, 1849, who were the owners of that house and land upon which it was situated—say to time of transfer in March, 1850?

(Objected to.)

Ans. I have already stated that it belonged and was in possession of D. H. Lownsdale, W. W. Chapman, and myself.

Cross-examination by Page, att'y:

Question 22. State when you first knew that Benjamin Stark was a claimant of the land referred to, and the occasion of your knowing the same.

Ans. The first I knew, except hearsay, was from Benjamin Stark himself, in San Francisco, in 1849, when he told me that he claimed the undivided half of this Portland land claim. My first introduction to Benjamin Stark was in San Francisco. I was introduced to him as being the owner of the one half of the Portland land claim. He told me that he owned the other half. I told him that I claimed the other half, and that it mattered not to me who my partner was.

Ques. 23. State what, if any representations, he made to
112 you at that time, as to how he became the owner of that land claim.

(Objected to as irrelevant.)

Ans. He stated that in 1846 or 1847 he had purchased the undivided half of A. L. Lovejoy.

Ques. 24. Who was A. L. Lovejoy, as connected with the Portland land claim?

(Objected to as above.)

Ans. A. L. Lovejoy was an attorney, I believe, living in Oregon City, and bought from Overton, who I understood to be the original claimant and occupant.

Ques. 25. What, if any, relation existed between Dan'l H. Lownsdale, Francis W. Pettigrow, and Benjamin Stark, or either of them, in relation to the Portland land claim? and if any at what time?

(Objected to as irrelevant.)

Ans. As a whole those parties were never connected together in

this land claim, that I know of. Mr. Pettigrow was occupying this claim whem I came to Oregon in 1847. I have understood since that Mr. Stark was interested with him. Some time in 1848, (the deed will show the time,) Francis W. Pettigrow sold his claim to Daniel H. Lownsdale, reserving certain lots and blocks already sold to other parties.

113 Ques. 26. Were any of the lots and blocks reserved, those sold by Pettigrow and Stark?

(Objected to as above.)

Ans. Some of them were.

Ques. 27. When you purchased into said claim, were the deeds made by Pettigrow and Stark ratified and reserved by you and by Dan'l H. Lownsdale?

(Objected to as above.)

Ans. So far as I am concerned they have been, so far as has been in my power. I could not say as to Mr. Lownsdale.

Ques. 28. What interest did you purchase in the Portland claim, and when was that purchase?

(Objected to as above.)

Ans. I purchased an undivided one half, less what had been sold previous, but took a deed or title-paper for the whole claim on the 30th day of March, 1849.

Ques. 29. Have you recognized, in connection with Dan'l H. Lownsdale or W. W. Chapman, or either or both of them, the right and title of Benjamin Stark to the land described and known as the "Stark's claim?" If so, when and how?

(Objected to, because it is irrelevant, and because it does not inquire whether it is in writing.)

Ans. I relinquished my right to Benjamin Stark in writing
114 dated April 13th, 1850. The document signed by me at that time will show the fact. Signed by D. H. Lownsdale, W. W. Chapman, Benjamin Stark, and John H. Couch, and myself.

Ques. 30. State, if you know, where that writing is, and all you know as to its whereabouts.

(Objected to as above.)

Ans. I do not know, at this time, where the original papers are. There is what I believe to be a copy in record of deeds, Washington county, Oregon, commencing on page eight and ending on page eleven of said book.

Ques. 31. Were the boundary line between the donation land claim of Benjamin Stark, and what was claimed by Coffin, Lownsdale, and Chapman ever agreed upon and settled by the parties? Answer fully and particularly.

(Objected to as irrelevant and because the terms and conditions of the relinquishment appear in the writing above referred to.)

Ans. It was agreed to as specified in the contract last referred to. The boundaries are as I described them in my former answer.

Ques. 32. State, if you know, under whom W. W. Chapman went into possession of the land in dispute.

115 (Objected to as irrelevant.)

Ans. From D. H. Lownsdale and Stephen Coffin.

Ques. 33. State, if you know, under whom the plaintiffs in this suit went into possession of the land in dispute, and how.

Ans. I do not know.

Ques. 34. State, if you know, when the plaintiffs went into possession, and if so, of whom they claim to have purchased.

Ans. I don't know when they went into possession of it, nor do I know their chain of title. The block 81 was sold to W. W. Chapman, as I stated before.

Ques. 35. Do you not know that the plaintiffs while in possession of the land claimed and pretended to hold the said land under the town proprietors?

(Objected to as irrelevant and not stating what town proprietors.)

Ans. My impression is that they do.

Ques. 36. Do you know whether or not Benjamin Stark was temporarily absent from his land claim from the first of September, 1849, to the 13th of April, 1850?

(Objected to as irrelevant and complicated, and because it assumes the witness to have said that he had a land claim.

116 Ans. He was absent. I have no knowledge whether he considered it temporarily or not.

Ques. 37. How long have you known Benjamin Stark to have resided upon his donation land claim, so called?

(Objected to, because it does not discriminate between the time after and before the date of his certificate.)

Ans. He resided on that claim for a number of years; I cannot now say how many.

Ques. 38. State what, if any, improvements he has made on the said land claim, and if any, the value thereof.

(Objected to as irrelevant.)

Ans. He has built within that tract frame and brick buildings to the value of ten thousand dollars and upwards; I don't know exactly the number of buildings he has put up.

Ques. 39. Do you not know that from September, 1849, to the 13th of April, 1850, that said Benjamin Stark while absent had an agent in Portland to look after what is known as his donation land claim, and also had valuable property thereon?

(Objected to as irrelevant and immaterial.)

Ans. A Mr. Sherman was here a part of that time, and may have been all, but I don't remember, acting as Mr. Stark's agent

117 and attending, as I understood it, to all of his business. I cannot call to my mind any valuable improvements put on by Mr. Stark's directions; he may have had some.

Ques. 40. Do you not know that during the time last referred to and for a long time prior Benjamin Stark was a known and recognized claimant to the said land claim?

(Objected to as irrelevant.)

Ans. I know that some persons said he was the owner of a part of this claim, and some said he had no right here whatever. I could not state to what extent his claims were recognized.

Examination-in-chief resumed:

Question 41. When you say you have recognized sales made by Pettigrow & Stark, is it your intention to be understood that when you purchased of D. H. Lownsdale you recognized Benjamin Stark as having any claim to the Portland land claim?

(Objected to.)

Ans. I don't think anything that I have said will warrant any such construction. I had no knowledge whatever at the time of my purchase that Mr. Stark was a claimant here.

118 Ques. 42. You have referred to your relinquishment to Benjamin Stark; state whether or not your subsequent acts in reference to his recognized possession were based upon that relinquishment?

(Objected to.) *(Objected to.)*

Ans. So far as Benjamin Stark is concerned, they were.

Ques. 43. Where you say the plaintiffs claimed under the town proprietors, what town proprietors do you mean, and who?

(Objected to.)

Ans. I mean Portland; W. W. Chapman, Dan'l H. Lownsdale, and myself as proprietors.

Ques. 44. When you say Benjamin Stark resided upon the Stark tract for a number of years, what portion of that time passed prior to the 10th day of Sept., 1853, and after the first day of September, 1849?

(Objected to.)

Ans. I think Mr. Stark came here to reside the latter part of 1850 or the first of 1851, and continued to keep up a residence to the time specified in the question.

Ques. 45. At the time he came here to reside, did he begin to reside on his tract or elsewhere in Portland?

(Objected to.)

Ans. I could not state. The storehouse that he was inter-

119 ested in was on what is now called Couche's addition to Portland. I am certain that he did not commence to reside on what is known as his tract until some time in 1851, but claimed it as I have before stated.

Ques. 46. State as near as you can who resided on the Stark tract prior to the first of September, 1849, and who, if any, you found residing there when the Portland land claim came into your possession?

(Objected to.)

Ans. I at this time only think of one man living on that claim at that time; it was, I think, Edward Warren; that is to say, when I purchased in, and I don't now think of any person up to the time specified in the question, although there may have been.

Ques. 47. Did not F. De Witt and William Warren, sen'r, reside upon that claim?

(Objected to.)

Ans. I do not recollect where Mr. De Witt resided at that time, although I think he was in town. Mr. Wm. Warren, sen'r, did not

live on that tract when I came to Portland. He did move on that tract, I think, after the time specified in the question, but as to the exact time I am not positive.

120 Ques. 48. State briefly who resided upon the Stark tract when you relinquished the possession to him, as stated in your previous answer.

(Objected to.)

Ans. I only think now of E. B. Comfort, William Warren, sen'r, Mrs. Richard White, Mrs. Coleman, and the persons named before.

Cross-examination resumed:

Ques. 1. Did Benjamin Stark reside on the Stark claim subsequent to the 10th September, 1853? and if so, for how long?

(Objected to, because it does not confine the answer within the period specified in his certificate.)

Ans. I think up to the time he went to the States, in either 1862 or 1863.

S. COFFIN.

121 Josiah Failing, being first duly sworn, testified as follows, (he being of the age of fifty years, and has been a resident of Portland since June 9th, 1841:)

Question 1. Are you acquainted with the parties to this suit?

Ans. I am.

Ques. 2. Are you acquainted with a tract of land known as the Stark tract?

Ans. I suppose I am, with what I have heard it spoken of as the Stark claim.

Quest. 3. State when you first come to Portland, and what part of the Portland land claim you settled on.

Ans. I arrived in Portland June 9th, 1851. I think I settled just north of Stark street.

Ques. 4. Did you become acquainted with the residents of that tract? And if, state as near as you can state who they were.

Ans. I think an old gentleman by the name of Warren was just north of me; Mr. Corbett had a store next door; Pillow & Dreer were keeping a watch store near by. It may be that Mr. DeWitt lived there, but am not positive; there may have been others but don't now remember who they were.

122 Ques. 5. Was not Benjamin Stark a resident of that tract?

(Objected to.)

Ans. There was no one by the name of Stark that I know of when I came there.

Ques. 6. When did you first become acquainted with Benjamin Stark, and when did you first recognize him as a resident of that tract?

(Objected to.)

Ans. I think it was the latter part of the summer of fall that I first heard of him; did not know him personally for a long time.

Cross-examination by Page for def'ts:

Ques. 1. Are you the Josiah Failing that verified an answer in the suit of Cullen C. Chapman against school district No. 1, the city of Portland, and Benjamin Stark?

(Objected to as irrelevant.)

Ans. I am.

Ques. 2. Did you or not in that suit on the 12th day of December, 1864, at the city of Portland, before Benjamin L. Norton, notary public for Oregon, swear as follows, to wit: On the 27th day of September, 1850, Congress passed a law, commonly known as the donation law, in Oregon, entitled "An act creating the office of
123 surveyor general of the public lands in Oregon, and to provide for their survey, and to make donations to settlers of said public lands," and in accordance with the said act, the said Lownsdale, then being, or claiming to be, in possession of a tract of land including the said lot number three (3,) (meaning lot then 3 in block twenty-nine within the Stark claim,) made claim under said act to said tract of land. That the said Stark at the same time, and under said act, also made claim to a tract of land including said lot (3) three, and that on account of the claims of said Lownsdale and Stark their boundaries conflicted.

(Objected to, because irrelevant and hard to be understood, and because the question is copied from an answer of which the question is only a part, the said answer explaining itself.)

Ans. Yes; I do not now remember having seen the conflicting of claims mentioned in the answer.

Examination-in-chief resumed:

Ques. 1. State whether you swore to the answer referred to as a whole, or whether the part embraced in the question by the
124 defendant was an isolated answer.

Ans. That paper was read to me, but I do not remember the part of it in regard to the conflicting of claims. I swore to the answer as a whole.

JOSIAH FAILING.

The taking of depositions on the part of the plaintiffs is, by consent of parties, adjourned until to-morrow, December 21st, at 1 o'clock p. m.

Wednesday, 21st Dec., 1864, 1 o'clock p. m., parties present, and taking of depositions deferred under the foregoing notice.

125 STATE OF OREGON, *Multnomah county, ss:*

I, H. C. Coulson, clerk of the county of Multnomah, State of Oregon, do hereby certify that the foregoing depositions of F. DeWitt, Stephen Coffin, Sherry Ross, and Josiah Failing, summoned to testify on the part of said plaintiffs, were taken before me, at clerk's office of said county, commencing at the date stated in the foregoing notice, continuing from day to day upon adjournments,

parties consenting thereto. Chapman appearing for said complainants, and Wait & Page appearing for said defendant. And the testimony of said witnesses was reduced to writing by James Ward, by consent of parties, under my direction. That before proceeding to the examination of said witnesses, they were each sworn to testify the truth, the whole truth, and nothing but the truth. That
126 deposition was read over to each respectively, and by them signed.

In testimony whereof, I have hereunto set my hand and affixed official seal this 22d day of December, A. D. 1864.

[SEAL.] H. C. COULSON,
Clerk Multnomah County, Oregon.

[5-ct. rev. stamp, canc'd.]

Depo	17 00
Serv. 4 writs	1 00
Sup	90
Certificate	1 00
	$19 90

On the foregoing is the following indorsement:

A. M. and L. M. Starr *vs.* Benj. Stark. Deposition of F. DeWitt, Sherry Ross, Stephen Coffin, Josiah Failing. Opened and filed in open court, February 15, 1865. H. C. Coulson, clerk.

Clerk's fees $19 90.

No. 36. Filed in the supreme court Sept. 2, 1865.
R. WILLIAMS, *Clerk.*

127 To A. B. Hallock, Shubrick Norris, Wm. M. King, N. H. Bennett, William Warren, Thos. Stephens, and W. S. Caldwell: In the name of the State of Oregon you are commanded to appear at the court-house, in Portland, on the 3d day of January, 1865, at ten o'clock a. m., to give evidence in a cause, wherein A. M. and L. M. Starr, plaintiff, and Benj. Stark, defendant, on the part of the pl'ffs.

Witness my hand and seal of said court this 31st day of December, A. D. 1864.

[L. S.] H. C. COULSON, *Clerk.*

On the foregoing was the following indorsement, to wit:

Circuit court. A. M. and L. M. Starr *vs.* Benj. Stark. Sub. for pl'ffs.

STATE OF OREGON, *Multnomah county:*

I hereby certify that on the 31 day of Dec., 1864, that I served the within writ on W. H. Bennett and A. B. Hallock, in Portland, in person, and that on the second day of Jan., 1865, I also served the within on Thomas Stephens, S. Norris, W. S. Caldwell, by reading

the same to each within named witnesses. William Warren not found in my county; Wm. King not able to be out.

JACOB STITZEL, *Sheriff*,
By F. M. ARNOLD, *Deputy*.

Dept. sheriff's fees, $4 90.

128 In the circuit court of the State of Oregon for Multnomah county, in equity.

A. M. and L. M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant.

To Messrs. Wait & Kelley, Page & Grover, and Wm. Strong, defendant's attorneys in the above cause:

Take notice that at ten o'clock a. m., on Tuesday, the 3d day of January, 1865, at the office and before the clerk of said court, or his authorized deputy, I shall proceed to take the depositions of A. B. Halleck, Shubrick Norris, Wm. M. King, W. H. Bennett, William Warren, and Thomas Stephens, W. S. Caldwell, to be used as evidence in said suit.

Yours, respectfully,

W. W. CHAPMAN,
Att'y for Pl'ffs.

Dec. 29th, 1864.

Indorsement: Original. Notice. Depositions. A. M. and L. M. Starr *vs.* Benj. Stark.

STATE OF OREGON, *County of Multnomah, ss:*

I hereby certify that I served the within notice on Wait & Kelley, and Grover & Page, in the city of Portland, Multnomah county, State of Oregon, on the 29 day of December, A. D. 1864, by de-
129 livering to them copies in person, and on William Strong on the 29th inst., by leaving a copy of same at his place of business, with a white person over the age of 14 years, he being absent from the city.

Sheriff's fees, $2 60. JACOB STITZ, *Sheriff*.

Portland, December 29, 1864.

Filed December 29, 1864.

H. C. COULSON, *Clerk*.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR
vs.
BENJAMIN STARK.

STATE OF OREGON, *Multnomah county, ss:*

In pursuance of the notice hereunto attached, the depositions of A. B. Hallock, W. H. Bennett, *et al.*, were taken before me, H. C.

Coulson, county clerk of said county, commencing at 10 o'clock a. m., January 3d, 1865, pl'ffs appearing by Chapman, their att'y, and the defendant appearing by Judge Wait, his att'y.

Examination-in-chief:

Mr. Wm. S. Caldwell, being first duly sworn, testified as follows, to wit:

1st ques. State your age and residence.

130 Ans. I am forty; residence Portland.

2 ques. State if you are acquainted with the parties to this suit.

Ans. I am.

3 ques. State how long you have been acquainted with ;

Ans. Since 1850.

4 ques. State, as near as you can, the time when you first became acquainted with Benjamin Stark, and where.

Ans. About the first of January, 1850, in San Francisco, California.

5 ques. Do you know where he then resided? and if so, state.

Ans. He was doing business in San Francisco, and, I presume, resided there.

(Objected to as immaterial.)

6 ques. State how long you remained in San Francisco, and where you went to from there.

(Objected to as above.)

Ans. I remained there until the latter part of February, 1850, and then I came to Portland, Oregon.

7 ques. State whether or not you ever saw Benjamin Stark in Portland, after the time you spoke of having seen him in San Francisco, and if so, how soon thereafter?

(Objected to as above.)

Ans. I did, some time in the summer of 1850; the exact month I cannot positively state.

131 8 ques. Did you or not ever know Benjamin Stark as a resident of Portland, Oregon? If so, when did you first so know him, and under what circumstances?

(Objected to as above, and as ambiguous.)

Ans. Stark was here during the summer of 1850. I think he returned to San Francisco shortly after his arrival, but am not positive. In the fall and winter *and winter* of 1850, he was here most, if not all, of the time, doing business as a member of the firm of Couch & Company, and remained here with occasional absences for several years afterwards.

9 ques. State, if you can, in what particular part of the town of Portland you first knew him to reside, and where he resided during the time that you knew him, until the 10th of September, 1853.

Objected to as leading, irrelevant, and suggestive.

Ans. Couch & Company, of which he was a member, done business in that part of Portland known as Couch's addition. Stark slept at the store for some time during the year of 1850. I cannot state positively where he got his meals before Frank De Witt opened a

boarding-house, on the corner of Oak and First street. After that house was opened he boarded there.

10 ques. State, as near as you can, about the time De Witt opened the house referred to.

(Objected to as immaterial and leading.

Ans. It was some time in the latter part of 1850; I cannot state the month.

132 11 ques. State, as near as you can, how long he boarded with De Witt, and where he next lived.

(Objected to as above.)

Ans. I cannot say how long he boarded with De Witt. My impressions are that he went from there to a house built by him, or Capt. Molthrop; but have no positive recollection on the subject.

12. State whether or not you are acquainted with the tract of land within the corporate limits of Portland known as the Stark tract.

(Objected to as immaterial.)

Ans. I know the Stark tract, sometimes called the flat-iron tract.

13 ques. Do you or do you not know the boundaries of that tract?

Ans. I think I do.

14 ques. State who were residents upon that tract at the time you first became acquainted with it.

(Objected to as immaterial.)

Ans. William Warren, William E. Warren, O. S. Hall, Edward Warren, E. B. Canford. I think Benjamin Ross. This was in April, 1850. About that time, and during that summer, Hobbs, Norris, and several others built stores and resided on it. I think, during the year 1850, the Starr boys were on that tract. The Warren House was built or commenced; the De Witt House before, referred to by me, a store of J. B. Q. Butler's; Thomas Stephens, I think;

133 the Willamette House, and several other houses were built.

15 ques. State whether or not there was business done in those stores, and of what kind generally.

(Objected to as immaterial.)

Ans. There was Hobbs, Norris, and Sheldon did a general business in the mercantile line *line;* Starrs had a tin shop.

16 ques. State, if you can, the location of the Starrs' tin shop.

(Objected to as immaterial and leading.)

Ans. On the block numbered on McCormick's map as No. 81, on the bank of the river.

17 ques. State, if you can, how early the Starrs occupied the place referred to by you.

(Objected to as above.)

Ans. I cannot state positively. It was in the latter part of the year that I first knew them. I was about a portion of the time during the months of August and December. I mean a week or ten days of each month between those of August and December.

18 ques. State what business Stark was doing in San Francisco, as far as you know.

(Objected to as above.)

Ans. In the mercantile business.

Cross-examination, by Wait:

134 1st ques. You stated in your examination-in-chief that Benjamin Stark was doing business in San Francisco in January, 1850. Was he not also doing business in Portland, Oregon, at that time?

Ans. Stark was a member of the firm of Stark & Company in San Francisco, of the firm of Couch & Company, Portland, Oregon, and I believe of the firm of Sherman & Stark, of New York city.

2 ques. When Stark came to Oregon in the summer of 1850, was that his first arrival in Oregon?

Ans. It was the first time I ever saw him here.

3 ques. Who were the three claimants of the Portland land claim, as far as you know?

(Objected to as immaterial.)

Ans. Coffin, Chapman, and Lownsdale, and, I think, Stark.

4 ques. How long had Stark been a claimant of the Portland land claim at the time you speak of in the summer of 1850?

(Objected to as irrelevant and leading.)

Ans. I cannot say of my own knowledge.

5 ques. State according to the best of your knowledge and belief.

(Objected to as leading, incompetent, and immaterial.)

Ans. For several years.

6 ques. You stated in your examination in-chief that when Stark came from San Francisco to Portland, Oregon, he soon returned to California. How long did he remain in California on such return?

135 Ans. I stated or intended to state that my impression was that he returned to California. If he did go to California he was not gone very long. It took at that time about a month to go and come. He might have been gone longer than that, if at all.

7 ques. Was the defendant a single or a married man in the summer of 1850?

Ans. I believe him to have been a single man at that time, and he was so reputed.

8 ques. State, if you know, Mr. Stark's object in going to California from Oregon in the summer of 1850.

Ans. If he went, I presume he went on business.

9 ques. How long have you known the defendant, Stark, to reside upon the land held by him as his donation land claim in the city of Portland?

(Objected to, because it does not discriminate between a residence prior to the date of his certificate and a residence afterwards.)

Ans. I have not known of his living in any other part of Portland since the fall or winter of 1850.

10 ques. State, if you know, the defendant, Stark, has made or caused to be made any improvements on his land known as the donation land claim in the city of Portland.

Ans. I think he has.

11 ques. State the value of such improvements when made.

136 Ans. I cannot state positively; the value is considerable. The improvements were made at various times.

12 ques. State in thousands the value of such improvements, as near as you can.

Ans. The improvements on property reputed to be his I should think were worth from thirty to forty thousand dollars.

(The two preceding questions and answers objected to, because they do not state the improvements to have been made prior to the date of defendant's certificate, and because they are immaterial.)

13 ques. Do you remember an old slaughter-house standing upon the Stark claim, and owned by him, when you first came to the country?

(Objected to, because the question assumes the witness to have said he knew the slaughter-house, and knew the defendant to be the owner, and because it is leading and immaterial.)

Ans. There was a building on the Stark claim known as the slaughter-house. I did not and do not know that it was his.

14 ques. Do you know that it was not his?

(Objected to as not the subject of cross-examination and immaterial.)

Ans. I have no positive knowledge as to who was the owner of the building at that time. I know of other parties exercising acts of ownership over the premises during the year 1850.

137 15 ques. State, if you know, who has been the sole claimant of that part of the city of Portland now held by defendant, Stark, as his donation land claim since the spring of 1850.

Ans. I do not know. I have understood that besides Stark there were other claimants, namely: D. H. Lownsdale, A. P. Dennison; there might have been others. I never examined the records in the land office to see who were the claimants.

16 ques. State, if you know, upon what claim the complainants entered upon the lots in controversy in this suit.

Ans. I do not know from whom they claimed title.

17 ques. Did you ever hear of the complainants claiming that tract under any act of Congress or under any town site law?

(Objected, because it calls for hearsay evidence.)

Ans. I did not.

Examination-in-chief resumed:

Ques. 1. State as near as you can what improvements the defendant made upon the tract in controversy prior to September, 1853; that is, the donation tract.

Ans. I cannot say of my own knowledge. The improvements on block 28 were made prior to that time; that is, the two square

138 houses. I cannot say whether they were built by Stark or Capt. Molthrop. I think Stark now owns them. Their houses was built in either 1850 or 1851. I don't think of any other improvements prior to 1853.

2 ques. You say that other parties than the defendant exercised acts of ownership over the slaughter-house. State who they were briefly, from the time you first saw it and as long as you can recollect.

Ans. I don't know positively as to who its occupants were. I

heard W. W. Chapman offer a reward for the apprehension and conviction of certain parties who tore down the fence or corral partially enclosing the premises, calling it his fence.

(So much of foregoing answer as refers to what Chapman said objected to.)

Cross-examination resumed:

1 ques. How long have you known the defendant, Stark, to have resided in one of the square houses by you alluded to in your direct examination resumed? from what time to what time?

(Objected to, because it does not confine the answer to a period previous to the date of the defendant's certificate.)

Ans. I think he resided in the house most of the time when in Oregon, from about the time of its completion until the present.

139 Direct examination resumed:

1 ques. Was Benjamin Stark the first resident of the square house alluded to? And if not, who was?

Ans. My best impressions are that Capt. Molthrop, or Major Tucker, or both of them, were the first occupants of the house, and that Stark boarded with them, but am not positive; since his marriage he has resided there. I can't say when that was.

(Ans. objected to, immaterial.)

2 ques. State whether Benjamin Stark ever resided Wapato Lake; and if so, when?

Ans. I have understood he had a nominal residence there, but never saw him there in, I think, 1853 or 1854.

Cross-examination resumed:

1 ques. Do you know anything about Stark having resided at any time at Wapata Lake?

Ans. Capt. Molthrop resided at Wapata Lake, and I have heard of Stark's being there a great deal.

2 ques. What connexion existed between Capt. Molthrop and Benjamin Stark.

Ans. Stark married his daughter about that time.

W. S. CALDWELL.

140 Mr. A. B. Hallock, being first duly sworn, testified as follows, to wit:

1 ques. State your age and residence.

Ans. I am thirty-six years old, and live in Portland, Oregon.

2 ques. State how long you have been a resident of Portland, Oregon.

Ans. Since August, 1850.

3 ques. Are you acquainted with a tract of land within the corporate limits of Portland, known as Stark's tract?

Ans. I am.

4 ques. What is and has been your occupation since you have resided in Portland?

Ans. I have been a builder and surveyor.

5 ques. Are you acquainted with the parties to this suit? And if so, how long have you been so acquainted?

Ans. Yes; I have known them for about fourteen years. I became acquainted with Benjamin Stark in the summer of 1850, and with the Messrs. Starrs in the fall of the same year.

6 ques. From the time you first became acquainted with Benjamin Stark up to September, 1853, where did he reside, if you know, and in what house?

(Objected to as leading and immaterial.)

141 Ans. When I first knew Benjamin Stark in Portland he was boarding at the City Hotel. From that time he was back and forth from San Francisco and New York until, I think, about 1852, when he came to Portland, and I think resided here steadily till 1853.

7 ques. Did you ever know Benjamin Stark in San Francisco, and under what circumstances, and when?

(Objected to as above.)

Ans. I think I met Benjamin Stark at his place of business in San Francisco, in the spring or early in the summer of 1850.

8 ques. What at that time did you know, if anything, of his residence in San Francisco?

(Objected to as immaterial.)

Ans. I knew him as a merchant of the firm of Stark & Company.

9 ques. Who kept the City Hotel?

Ans. Frances De Witt.

10 ques. State who resided first in the square building called the Molthrop house, and who subsequently to September, 1853.

(Objected to as leading and immaterial.)

Ans. Anthony L. Davis and Charles D. Birdseye. These are the only tenants I remember now as living there.

11 ques. State who first resided in the house recently occu-

142 pied by Benjamin Stark, situated at southwest corner of First and Ash streets, and subsequently to September, 1853.

(Objected to as above.)

Ans. I think the house was first occupied by J. L. Parrish, then by Major Tucker, then by the Rev. Mr. Yantes. I don't remember who was in it subsequent to that. I think Stark occupied it next himself.

12 ques. State about the time Yantes ceased to occupy it.

(Objected to as above.)

Ans. I don't remember the time.

13 ques. State, if you can, what time Capt. Molthrop moved to Wapatu Lake?

Ans. I don't know.

14 ques. State who was in the possession and occupancy of the slaughter-house block when you arrived in Portland, the different occupants since that time, and the improvements.

(Objected to as above.)

Ans. When I first came here Col. Chapman claimed the so-called slaughter-house property. I think Frank De Witt had some slaught-

ering done for his hotel done there. The first improvement that was made was a little building put up by the plaintiff, Starr, in October, 1850. The next was a chair factory put up; a part of the slaughter-house was used; these improvements were on lots 2 and 3. The
143 next improvement I remember was a storehouse put up by Mr. Norris, I think in 1852, on lot 1. The next was an addition to the chair factory, on lot (3) three. The next was two buildings put upon lot one (1.) The next was a foundation wall laid upon lots one and two (1 and 2.) The chair factory improvement was made in part by Joseph Clearer and Jackson Powell. Two buildings on lot four (4) were erected separately, one by Sherlock & Co., the other by plaintiff, Starr. The foundation wall on lots one and two (1 and 2) was erected by plaintiff, Starr.

(The whole of the above answer is objected to, and especially that part that is not responsive to the interrogatory.)

Cross-examination:

1 ques. You state in your examination-in-chief that you became acquainted with Benjamin Stark in California, in 1850. Was he not then a merchant doing business in Portland, Oregon?

(Objected to because the question is leading.)

Ans. At that time I did not know that he was. Upon my arrival in Oregon, in August, I heard that Benjamin Stark was a member of the firm of Couch & Company, at Portland, Oregon.

2 ques. How many times did you see the defendant, Stark, in California?

144 Ans. I think I saw him once or twice. He was in Oregon when I arrived here.

3 ques. Where has been the home and residence of defendant, Stark, since your arrival in Oregon?

Ans. Benjamin Stark left here shortly after I came here, for California, and thence I learned he went to New York, and returned here, I think, some time in January or February of 1851. I don't know how long he then remained here. I think it was in 1852 he married and settled here, and has had his home here until the past year.

4 ques. Has he at any time represented this county in the legislature? And if so, at what time?

Ans. He was elected a representative of Washington county, which then included Portland, in 1852 or 1853.

5 ques. Was that before or after he married?

Ans. I think it was before he was married.

6 ques. Upon what part of the Portland land claim has defendant, Stark, resided during his residence in Oregon?

(Objected to, because it does not refer to a period prior to the date of his certificate.)

Ans. So far as I know upon the Stark claim.

7 ques. Who were the claimants to the Portland land claim when you came to Oregon in the summer of 1850?

Ans. Stephen Coffin, D. H. Lownsdale, W. W. Chapman, and Benjamin Stark.

8 ques. What improvements has the defendant, Stark, made
145 upon the land held by him as his donation land claim in the city of Portland?

(Objected to as above.)

Ans. When I arrived here in 1850, there was a little building in course of erection on block 34, which was to be used by Geo. H. Sherman, who was to be the agent of Stark during his absence in the States, as an office. The next improvement was on block 28; two buildings were erected in the fall of 1850, one by myself and partner, the other by another builder. It was represented to me by Capt. Molthrop, that one was for himself and the other for Stark. Subsequent to that, in December, myself and partner contracted with Geo. H. Sherman, and proceeded to erect a stable and sheds on block 41, and an office on block 40. Sherman was the att'y and agent of Stark. His next improvement was the erection of two or three wooden storehouses joining the office on block 40. These he subsequently removed and erected two brick stores, and two dwelling-houses to the rear of them; the same year a dwelling-house on block 31; two years ago he moved one of the dwelling-houses from block 40 to block 31, and erected two more brick buildings on block 40; one year ago, in connexion with other parties, he drove a number of piles, and put on the capping on the east side of Front street, between Ash and A streets. This year they have extended the same out further
146 into river and finished it for a wharf.

9 ques. State the size and character of the brick stores referred to by you.

Ans. The first named reached 25 by 80, three stories in height; the others 25 by 70, two stories in height; all fire-proof buildings.

10 ques. State the value of all the improvements enumerated by you, except the wharf, and also the value of that, separately.

Ans. I judge them to have been worth about $44,000, and the wharf improvements to be worth at least ten thousand dollars.

11 ques. State under whom the complainants claim to hold, as far as you know, the lots in block 81.

Ans. I don't know anything about that.

12 ques. State, if you know of any claim by the complainants under the town site law or any act of Congress.

(Objected to, because it is not the best evidence.)

Ans. I do not know of any.

Examination-in-chief resumed:

1 ques. State whether the inhabitants of Portland, including those on the Stark tract, did not set up a town site law prior to the issue of said Stark's patent.

(Objected to as calling for hearsay evidence and as imma-
147 terial.)

Ans. Some of them did.

2 ques. State what Benjamin Stark said in reference to the decision of the commissioner, making a reservation in favor of lot-holders.

(Objected to as immaterial, and assuming that he said something, and as leading.)

Ans. I do not remember.

3 ques. What proportion of all the improvements stated by you to have been made by Benjamin Stark, were made subsequent to the 1st of September, 1853.

Ans. About five-sixths, the wharf not included.

4 ques. When can you state Benjamin Stark to have been first a resident of the Stark tract, to have owned a residence thereon, and occupying the same?

(Objected to as leading, immaterial, and ambiguous.)

Ans. I cannot give any particular time; I think he and his family first moved into the house built by him and Molthrop in 1850, about the year 1853; I can't give particular time as to when he built and lived in the house he owned and built.

Cross-examination resumed:

1 ques. You stated in your examination-in-chief that when you first came to Oregon, that Stark was boarding at the City Hotel. Was that City Hotel on his land claim?

Ans. It was.

148 2 ques. Where did he board or reside after you came here before his marriage?

Ans. He boarded at different places on the Stark claim prior to the time of his marriage, when at Portland.

3 ques. You stated in your examination-in-chief resumed that several persons claimed to hold their lots under the town site law. Were the complainants of that number?

Ans. I do not know.

Examination-in-chief resumed:

1 ques. State whether Benjamin Stark had any interest in the improvements or dwellings where you say he boarded at different times.

Ans. I don't know of any.

2 ques. Who owned the City Hotel building?

Ans. F. De Witt claimed it.

3 ques. Who owned the Warren House?

Ans. William Warren claimed to own it.

Cross-examination resumed:

Ques. Who furnished the lumber for the Warren House and City Hotel?

Ans. Couch & Co. furnished some; I do not know on what terms; I heard there was some difficulty in regard to the Warren House, but don't know what it was.

A. B. HALLOCK.

149 STATE OF OREGON, *Multnomah county, ss:*

I, H. C. Coulson, clerk of Multnomah county, Oregon, do hereby certify that the foregoing depositions of W. S. Caldwell and A. B. Hallock, summoned before me to testify on the part of the plaintiffs in the above-entitled cause, were taken before me on the 3d day of

January, A. D. 1865, at county clerk's office of said county, between the hours of ten o'clock a. m. and 5 o'clock p. m. of said day, W. W. Chapman appearing for said complainants and A. E. Wait for said defendant. The testimony of said witnesses was reduced to writing by James Ward, by consent of parties, under my direction. That before proceeding to the examination of said witnesses they were each duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and the deposition read over to each respectively, and by them signed.

In testimony whereof, I have hereunto set my hand and official seal this 3d day of January, A. D. 1865.

[SEAL.] H. C. COULSON, *County Clerk.*

[5 c. int. rev. stamp, cancelled.]

Taking deposition $12 00
Sh'ff's fee 4 90

On the foregoing is the following indorsement, to wit:

A. M. and L. M. Starr *vs.* Benjamin Stark. Circuit court. Depositions of W. S. Caldwell and A. B. Hallock, for pl'ffs.

Filed Jan'y 3d, 1865.

H. C. COULSON, *Cl'k.*

Opened and filed in open court Feb'y 20, 1865.

H. C. COULSON, *Clerk.*

Fees:

Depo $12 00
Sh'ff's 7 50

19 50

No. 36. Filed in the supreme court Sept. 2d, 1865.

R. WILLIAMS, *Clerk.*

150 In the circuit court of the State of Oregon for Clackamas county, Oregon.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, defendant.

Depositions taken before J. M. Bacon, county clerk of Clackamas county, Oregon, according to a notice dated Portland, Feb. 2d, 1865. W. W. Chapman, pl'ffs' att'y; E. A. Wait, def't's att'y.

A. L. Lovejoy, being sworn, says:

Ques. Are you acquainted with the parties in this suit?

Ans. I am.

Ques. How long have you been acquainted with them?

Ans. I became acquainted with B. Stark in Oct., 1845; I must have been acquainted with pl'ffs some eight or ten years.

Ques. Where did you become acquainted with defendant?

Ans. Somewhere in the Columbia river in this State, on board the barque Tulon.

Ques. Are you acquainted with the Portland land claim.

Ans. I am.

Ques. Was you ever a part owner of said claim? and if so, when?

Ans. I was, in the years 1844 and 1845.

151 Ques. Did you sell your interest in that claim? If so, to whom, and what interest?

Ans. I sold my interest to Benj. Stark, the one undivided half of said claim, then supposed to contain about 640 acres.

Ques. Have you been acquainted with said Stark from the time you first became acquainted with him until the present time?

Ans. I have.

Ques. Where has been said Stark's place of residence from the time you became acquainted with him until the present time?

Ans. He boarded with Mr. Pettigrove in the winter of 1845, off and on, and resided with Pettigrove, at Oregon City, until Pettigrove moved to Portland. Pettigrove moved to Portland either in the year 1846 or 1847, and lived in what is known as the Pettigrove House. I think said Stark resided with Mr. Pettigrove, in Portland, until Nov., 1847, off and on, while not on board ship, when he left in the ship, and I think he returned about July, 1849, and went away again to California before a great time after; I think he returned again in 1849; I always understood that he resided in

152 Portland; since 1850 he claimed his residence in Portland. He was a member of the legislature in 1851 and 1852, sent from Washington county, of which Portland was a part.

(All that part of the foregoing answer referring to the residence of Benj. Stark prior to the 1st of Sept., 1849, is objected to as irrelevant.)

Ques. When Stark left the Tulon in 1847, did he or did he not so leave on business?

(Objected to as above.)

Ans. I think he did.

Ques. State if you know whether he left intending to return when he left?

(Objected to as above.)

Ans. I think he did, for the reason that he made Mr. Burnet and myself his att'ys to look after his property and interest during his absence.

Ques. What property had he here then?

Ans. He had his interest in Portland that I had sold him, and I think some stock and some other interest.

(Objected to as above.)

153 Ques. State if you know whether the def't considered his residence to be at Portland at the time of his leaving on the Tulon.

(Objected to as above.)

Ans. He always gave me as that impression in his conversation with me.

Ques. Have you been absent from Oregon? if so, at what time?

Ans. I left Oregon City the 11th of Sept., 1848, to explore the golden regions in California, and returned and arrived in Portland in Feb., 1849.

Cross-examination by plaintiffs' att'y:

Ques. State in what capacity or occupation Benj. Stark arrived in Oregon on your first acquaintance, and how long that occupation continued.

(Objected to.)

Ans. When he arrived he was regarded as supercargo of the Tulon, and remained either supercargo or agent until she was sold, which was several years afterwards.

Ques. State whether he generally accompanied that vessel on her voyage.

(Objected to as above.)

154 Ans. He did sometimes, and sometimes did not.

Ques. When Benj. Stark returned to Oregon in 1849, where did he then reside?

Ans. My impressions are it was in Portland.

Ques. Where did Pettigrove reside in 1849?

Ans. In the fore part of 1849, he lived in Portland. He broke up house keeping early in the spring, and moved his family to Oregon City, and he went to California afterwards; returned, took his family and went to California.

Ques. State about what time Pettigrove sold out to Lonsdale.

Ans. I think in Nov. or Dec'r, 1848.

Ques. State whether Daniel H. Lownsdale was residing in the Pettigrove House when you returned from California in 1849. If not, who was?

(Objected to as above.)

Ans. He was; Pettigrove's family was also residing there.

Ques. State, if you know, who resided in that house after Pettigrove removed from it during the year 1849.

(Objected to as above.)

Ans. I do not know.

Ques. Are you acquainted with the tract of land in Portland known as the Benj. Stark tract, patented to him?

155 Ans. I am to some extent.

Ques. Do you or not know of Benj. Stark having resided upon that tract at any time from the 1st of Sept., 1849 to the 10th of Sept, 1853? and if you do, when did that residence begin, and how long did it continue? what house was it in, and where was it situated?

(Objected to as leading in contracts.)

Ans. During those years I do not know of my knowledge that he did reside on that tract. Was doing business on the Couch place, or had a place of business there.

Ques. Can you state any residence that Benj. Stark ever had upon that tract prior to 1852?

(Objected to as leading.)

Ans. I cannot.

Direct examination resumed:

Ques. Do you know at what particular place Stark resided in Portland during the years 1849, 1850, 1851, 2, and 3?

Ans. I do not.

Ques. Do you mean to be understood as saying that the def't
156 did not reside upon the Stark tract in 1849, 50, 51, 52, and 53?

Ans. I mean to say this. I did know where he did reside; where his place of boarding was.

Cross-examination resumed:

Ques. Did you ever know of a firm in San Francisco having a house and doing business there, of which Benj. Stark was a member?

(Objected to as immaterial.)

Ans. Not of my own knowledge.

Ques. Did you ever see an advertisement upon that subject in the Oregon Spectator, or any other paper?

(Objected to as immaterial, and not the best evidence.)

Ans. I do not remember that I ever did.

Ques. Have you any knowledge of Benj. Stark's going to the States in the fall of 1850 or about that time? and if so, when did he return?

(Objected to as immaterial.)

Ans. I think he went in 1850 or 1851, but *but* cannot tell when he returned.

Ques. State, if you know, at what time Mr. Pettigrove be-
157 came the half owner of the Portland claim?

Ans. In the winter of 1844 and '45.

Ques. State whether at any time it was determined between Pettigrove and yourself, or between Pettigrove and Stark which part of the claim should be Pettigrove's and which part the other's.

(Objected to as immaterial.)

Ans. No division other than the house and 2 acres on which Pettigrow lived, and a two-acre lot below it. This division was between Pettigrow and myself.

Ques. State whether or not the division referred to gave to Pettigrow the block on which the Pettigrow House stood, and if so, whether that fact was known to Benj. Stark when you sold your interest in Portland to him.

(Objected to as immaterial.)

Ans. It did, and have no doubt Stark so understood it, as he took the two-acre lot below as an offset for the two acres on which the house stood. The house was built with Pettigrow's money.

A. L. LOVEJOY.

158 John G. Campbell, being sworn, says:

Ques. Are you acquainted with the parties in this suit? If so, how long have you known them?

Ans. I have known Stark since the fall of 1845, and the pl'ffs several years.

Ques. Where have you known Mr. Stark?

Ans. In Oregon and California.

Ques. Are you acquainted with the Portland land claim?

Ans. I am.

Ques. Where has been Mr. Stark's residence from the time since you became acquainted with him?

Ans. Until some time between the years 1850 and 1860 I do not know that he claimed any residence. In 1847 Mr. Benson, in the city of New York, asked me when I had last seen Mr. Stark; if he had said when he was coming home, as he had sent him out, and was anxious to know. On my return in the beginning of 1848 to Oregon, I heard he had gone home by the way of China, and do not recollect seeing him again until I saw him in his own store in San Francisco, in the spring of 1850.

159 Ques. What do you know of the residence of Benj. Stark, in Portland, Oregon?

Ans. I know nothing at all until after he was married.

Ques. Where has he resided since he was married, and when was he married?

Ans. I was at his house once in Portland since that time. I think he was married in 1854. I do not know where he has resided.

Ques. Have you been absent from Oregon since your acquaintance with Stark? If so, when?

Ans. I was absent from May, 1847, to March, 1848, and from May, 1850, to about the 1st Feb'y, 1851, and about 1½ months in the summer of 1854.

Ques. Where has been your residence in Oregon?

Ans. In Oregon City?

Ques. Have you often seen the def't in Oregon from the time of your first acquaintance with him till now?

Ans. I have; we used to be very intimate.

Ques. Where have you generally seen him?

Ans. I have seen him a good deal in Oregon City.

160 Cross-examination:

Ques. State as far as you know what the occupation and business of Benj. Stark was in Oregon or on this coast.

(Objected to as immaterial.)

Ans. I was introduced to him by Mr. Pettigrow as the supercargo of the Tulon.

Ques. State how long that occupation continued.

(Objected to as above.)

Ans. I understood it continued until she was sold in the East Indies.

Ques. State from whence she sailed preceding her first arrival in Oregon.

(Objected to as above.)

Ans. I understood she sailed from New York.

Ques. In your conversation with Mr. Benson did you learn whether he expected Benj. Stark to continue as supercargo or in any capacity with the Tulon, or to return with her or without?

(Objected to as immaterial and as hearsay evidence.)

Ans. He had sent Pettigrow and Stark here, and was anxious for information and remittances.

161 Ques. State whether you have any information of a business house in San Francisco of which Benj. Stark was a member; and if so, who were the members, and when, if ever, was it dissolved?

(Objected to as immaterial.)

Ans. I was at a store in San Francisco, in which I saw Mr. Stark, in which he represented himself as head business partner there in the spring of 1850, and I understood the Messrs. Sherman, of New York, were the other partners. I think the partnership was closed in the year 1850.

Direct examination resumed:

Ques. State if you know whether Mr. Stark, at the time you saw him in California, was connected with a business house in Portland, Oregon.

Ans. He was doing a commission business in California, and I think was connected with J. H. Couch.

Cross-ex. resumed:

162 Ques. State whether you have any recollection either from having seen advertisements or *or* the general understanding whether John H. Couch was a member or interested in the firm referred to in San Francisco, and also the style of that firm, if you know.

(Objected to as immaterial, as calling for hearsay evidence, and not the best evidence.)

Ans. I do not recollect hearing that J. H. Couch was interested in the firm. The style was Stark & Co.

J. G. CAMPBELL.

Daniel Harvey, being duly sworn, says:

Ques. Are you acquainted with the parties in this suit?

Ans. I know them, but am not intimately acquainted with them—the pl'ffs.

Ques. How long have you been acquainted with Mr. Stark?

Ans. In 1849 I first got acquainted with him.

Ques. Have you been acquainted with the defendant since 1849?

163 Ans. In 1850 he paid a visit to Dr. McLaughlin, but since I have not seen him much.

Ques. Where has been the def't's residence since you have been acquainted with him?

Ans. I always understood that Portland was his residence.

(The above answer was objected to as not competent evidence.)

Ques. How long have you resided in Oregon, and where?

Ans. I came to this country in the spring of 1841, and resided in the neighborhood of Vancouver until 1849, since which time I have resided in Oregon City.

Ques. Had you heard that the defendant, Stark, resided in Portland previous to your acquaintance with him in 1849?

(Objected to for irrelevancy and calling for hearsay evidence.)

Ans. I always heard of him as a resident of Portland.

Cross-examination:

Ques. State where and when you became acquainted with the def't, Stark, in 1849.

Ans. To the best of my recollection, I first met him in Ore-
164 gon City. He was on a visit to Dr. McLaughlin's, Sept.,1849.

Ques. State, as near as you can in 1850, when you became more intimately acquainted with def't, and also how long he remained at Oregon City at that time.

Ans. It was about the beginning of Oct. he came on a visit from Portland. He was taken unwell and remained for near a month.

Ques. State, if you know, whether he remained in Oregon any time; and if so, how long?

Ans. I believe he was a resident of Oregon for several years after that time.

Ques. State, if you know, of any particular residence of the def't, B. Stark, from your first acquaintance with him till 1852.

Ans. I cannot say the street or house, but believe he was a resident of Portland generally.

Ques. State what reasons you have for believing him to have been a resident of Portland from Sept., 1849, until Oct., 1850.

Ans. Because I often heard him of as a resident of Portland.

Ques. Do you know of def't, Stark, owning or residing in any particular house in Portland?

165 Ans. I do not know where he lived, what house or street.

Ques. Do you know anything of his having been a householder or keeping house in Portland from your first acquaintance with him in 1849 till 1852?

Ans. I do not know that he was a householder, but always understood he was. Most always met him when I went to Portland.

Ques. Did you understand, prior to the fall of 1850, that Benj. Stark was keeping house in Portland?

Ans. I always understood that he was.

DANIEL HARVEY.

166 W. W. Buck, being duly sworn, says:

Ques. Are you acquainted with the parties in this suit?

Ans. I am acquainted with def't, Stark, and with one of the Mr. Starrs.

Ques. How long have you been acquainted with the def't?

Ans. I have been acquainted with Stark since the early part of the year 1846.

Ques. Where has he resided since your acquaintance with him?

Ans. In the early part of 1846, when I first knew him, he was generally residing in Oregon City, but was doing business in Portland. He was then supercargo of the Tulon. He was supplying the Tulon with cargoes at Portland. He was interested in the Portland claim equally with Pettigrow. In the latter part of the summer of 1846 he lived in Portland. That was his home except when he went to the Sandwich Islands with the vessel. In the spring of 1847 he took up his residence with me in Portland; lived, during that summer, in the house known as the Pettigrow House. He lived with me until
167 Nov., 1847. In Nov. he sailed for Sandwich Islands and China; Capt. Couch with him. I understood that they went through Europe, and from thence to New York, and returned to Portland some time in the spring or summer of 1850, to the best of my knowledge; in 1850 he resided in or near Portland, I do not know which. They were doing business in a house near where Allen & Lewis's store now stands. Where he lived I do not know. There were no buildings for dwellings down there occupied; the buildings were all in the old Portland town site. In the fall of 1850, if my memory serves me, he and Capt. Moltrop built each of them a house alike in Portland. From that time to the present I have regarded Portland as his home excepting when he was away upon business.

Ques. When he went away on the Tulon in the fall of 1847, did he leave any property? If so, what property?

Ans. He left the undivided half of the Portland claim, upon which he and Pettigrow had erected a wharf and a store known as the old shingle store. There was one block of land that was his, in-
168 dependent of Pettigrow—the next block north of the one upon which the Pettigrow House stood. He left a band of cattle in my charge upon the farm now owned by Gile, a little north of Portland, and one horse, to be returned to him on his return.

Ques. Did he leave Oregon upon that occasion with the intention of returning, and did he go upon business?

Ans. He went with the intention of returning. I suppose he went upon business?

Ques. State, if you know, what place he regarded as his home when he left Portland.

Ans. He told me Oregon was his home; all his actions went to show such to be the case.

Ques. Have you known him to have any other residence other than Portland since you have known him?

Ans. I have not.

Ques. Where has he boarded or kept house, as the case might be, since his return from the trip to the Sandwich Islands and China?

Ans. He must have boardedorkept house in the old town site of Portland, or on board of the vessel.

169 Ques. From what time and to what time do your remember distinctly of his having boarded or kept house on the Stark tract?

Ans. I think he built a house in the fall of 1850, which, I think,

is his dwelling-house in Portland, at the present time, when he is at home; I suppose that to be on the Stark tract. He has resided in that house since that time.

Cross-examination:

Ques. You have stated that in 1850, Benj. Stark resided in or near Portland. Designate what particular part of Portland or vicinity he resided in as near as you can. Was it in that part known as Couche's addition, or was it in southern Portland, or in what section of the present city of Portland?

Ans. He was doing business where I have already stated. In the fall of 1850, he lived with Capt. Moltrop, in the north part of Portland. Where he lived before that time I do not remember—in the year 1850.

Ques. Do you know that Benj. Stark had a place of residence on the Stark tract, ever before the Moltrop House? If so, when
170 was it? What house?

Ans. The line to what is known as the Stark tract was made some time since he built his present residence. Up to the time he and Capt. Moltrop commenced keeping house together, I cannot tell what particular part of Portland he did reside in.

Ques. Were you acquainted with the Appenon House, and did you not take meals with Mr. Stark at that house?

Ans. I cannot tell.

Ques. Can you or can you not state that Benj. Stark, prior to his keeping house with Capt. Moltrop, had a place of residence within the Stark tract?

Ans. I do not know.

Direct ex. resumed:

Ques. What interest did Stark have in the Portland land claim, in 1846, '7, '8, '9, and 1850?

(Objected to as irrelevant.)

Ans. I understood he owned an undivided half, both from himself and Pettigrow.

171 Cross-ex. resumed:

Ques. You stated that Stark owned independently the two northern blocks. State whether Pettigrow did not own, independent of Stark, the improvements on the two southern blocks, including the Pettigrow House, or what do you know upon that subject?

(Objected to as immaterial.)

Ans. Pettigrow did own the two southern blocks, including the Pettigrow House.

Ques. State if you know of Stark's doing business in 1849 and 1850, in San Francisco, and all you know about that.

Ans. In 1850, one branch of the firm of Stark, Couch & Sherman was in San Francisco, and one in Portland. I understood Mr. Stark to be the head of the firm in Portland, and Mr. Sherman in San Francisco. I know that I purchased one thousand dollars of goods of Stark, in Portland, in 1850.

Ques. State what description of goods you purchased of Stark, in Portland, and if you know from whence they were imported.

172 Ans. White lead, linseed oil, either 4 or 6 sets of carpenters and joiners' tools, and other hardware for the courthouse being built at Oregon City.

Ques. State if you know whether Sherman superintended the business in San Francisco.

Ans. I do not.

Ques. How early in the year 1850, did you know Benj. Stark to be in Portland?

Ans. I cannot tell the month.

Ques. State about how long he remained before he left again.

Ans. I do not know that he did at all, only upon business.

Ques. Do you know of his leaving at all in 1850, and if so, when?

Ans. I do not know in what month of the year.

Ques. Can you tell the season of the year when he left?

Ans. I cannot.

Ques. Can you tell whether he left more than once in that year?

Ans. I cannot.

Ques. State whether in 1850 you rec'd a package by Benj. Stark, from Mr. and Mrs. Campbell.

(Objected to as immaterial.)

173 Ans. I did receive a package by Mr. Stark from Mr. and Mrs. Campbell when they were on their way to the United States. I understood them to have met at Panama.

WM. W. BUCK.

Heman S. Buck, being duly sworn, says:

Ques. Are you acquainted with the parties to this suit?

Ans. I know Benj. Stark.

Ques. How long have you known Benj. Stark, and where?

Ans. I knew him first, I think, in July, 1846. The first place I saw him was on Scopoos plains; have known him ever since.

Ques. Where has he resided from the time you first became acquainted with him?

Ans. I have not known of his residing anywhere except in Portland.

Ques. State if you know in what part of Portland he has resided.

Ans. In the summer of 1847 he lived with my father, in the Pettigrow House; after that time, until he built his own house, which I think was in 1850, I do not know what particular part of Portland he did live in. Since he built his house that has been his home,

174 according to my understanding, while he lived in his house, which I think was in the winter of 1851 and 1852.

Ques. Could he have boarded upon the Couch claim in the years 1849, '50, and 1851?

Ans. I do not know of his boarding anywhere, except on board the Torquena a little while; I think it was in 1850.

Ques. Were there any places where a person could board on the Couch claim in the year 1849, '50, and 1851?

Ans. I do not remember of any.

Ques. Were you well acquainted with Portland and the vicinity in the years 1849, 1850, and 1851?

Ans. Only from previous knowledge. I was only in Portland occasionally after 1848.

Ques. Do you remember of the def't being elected to the legislature at any time? If so, when; from Portland?

Ans. I think he was; but the year I do not remember.

Ques. How long do you know the def't to have resided in his dwelling-house on the Stark tract, in Portland? from what time to what time?

Ans. From the winter of 1851 and 1852, until, I *I* think, to the year 1861, July 4th.

175 Ques. State what interest Stark claimed in the Portland land claim in the years 1847, 1848, 1849, 1850, and 1851.

(Objected to as immaterial.)

Ans. I only know of his claiming an undivided half.

Cross-examination:

Ques. Do you know Benj. Stark in the early part of 1850, reduced his claim, whatever it might be, to what is known as the Stark tract, and held that, or claimed to hold it, in his own name?

Ans. I do not know it.

Ques. Do you know anything of Major Tucker moving into Stark's house some time in the latter part of the winter of 1851, and 1852, and 1853?

(Objected to as immaterial and leading.)

Ans. I do not remember of his moving in, but I know they were keeping house for Mr. Stark in the winter of 1851 and 1852; what time in the winter I cannot tell. When I was there.

Ques. Do you know whether the furniture which you have since recognized as being the furniture in Stark's house, was Major Tucker's furniture?

176 (Objected to as immaterial.)

Ans. I do not think it was Major Tucker's.

Ques. Do you know how many times and how long Benj. Stark was gone from Oregon, from the summer of 1849 till 1853?

Ans. I do not.

Ques. Can you state any number of times? if so, how many and how long?

Ans. I cannot. I think he went away, but cannot tell how long, or when he went.

Ques. Do you know of Benj. Stark doing business in San Francisco in 1849 and 1850? If so, under what circumstances?

Ans. I only know that the firm said they had a house in San Francisco.

Ques. Is the time when you say you stopped with Benj. Stark, then having Major Tucker to keep house for him, the first time that you can say you knew Benj. Stark to have a residence or be residing within the Stark tract?

Ans. That is the first date or place that I can remember of.

Direct ex. resumed:

Ques. Did the def't reside in Portland prior to the time stated
177 in your last answer? and if so, how long?

Ans. I supposed he resided there. I have always understood it to be his house since 1846.

(The above answer objected to as the understanding of the witness and not his knowledge.)

Ques. Do you not know that Stark resided in Portland prior to that time?

Ans. He lived with my father in 1847, in the Pettigrow House.

(Objected to as above.)

Ques. What do you know of Col. Stark's residence in Portland, after he resided with your father, until 1850 and 1851?

(Question objected to, because it does not specify what particular part of the town, and irrelevant.)

Ans. I do not know what part of Portland he lived in.

Ques. When, after Stark left on the Tulon for the Sandwich Islands and China, did he return to Portland?

Ans. I think he returned in 1850.

H. S. BUCK.

178 STATE OF OREGON, *Clackamas county, ss:*

I, J. M. Bacon, county clerk of said county and State, do hereby certify that *that* the above deposition was taken before me and reduced to writing by myself, in Oregon City, in said county, on the 10th day of February, 1865, at 9 o'clock a. m., in pursuance of notice; that the above-named witnesses before examination was sworn to testify the truth, the whole truth, and nothing but the truth; and that the said deposition was carefully read to said witnesses, and then subscribed by them.

Dated at Oregon City the 10th day of Feb., 1865.

[L. S.] J. M. BACON, *County Clerk.*

On the foregoing was the following indorsement:

No. 36. A. M. and L. M. Starr *vs.* Benj. Stark. Deposition. Opened and filed in open court February 14, 1865.

H. C. COULSON, *Clerk.*

Filed in the supreme court Sept. 2, 1865.

R. WILLIAMS, *Clerk.*

179 To Wm. M. King, Geo. H. Flanders, W. Warren:

In the name of the State of Oregon, you are commanded to appear in the circuit court of the State of Oregon for the county of Multnomah, at the court-house, in Portland, forthwith, to give evidence in a cause wherein A. M. and L. M. Starr, plaintiffs, and defendant B. Stark, on the part of the pl'ff.

Witness my hand and seal of said court this day A. D. 186 .

[L. S.] H. C. COULSON, *Clerk.*

On which is the following indorsement, to wit:

STATE OF OREGON, *Multnomah county, ss:*

I hereby certify that I summoned the within named persons in the city of Portland, in Multnomah county, on the 18th day of Feb., 1865, by reading the same to each.

Sheriff's fees, $2 10.

JACOB STITZEL, *Sheriff*,
By W. KLINE, *Deputy.*

In the circuit court of the State of Oregon for Multnomah county, in equity.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, def't.

The defendant, in the above-entitled suit will take notice that
180 on the 18th day of February, A. D. 1865, between the hours of 8 o'clock a. m. and 4 o'clock p. m. of said day, at the clerk's office of said county, before the clerk of the county court of said county, or his authorized deputy, the plaintiffs will proceed to take the depositions of Wm. M. King, Geo. H. Flanders, William Warren, Shubrick Norris, William McMillen, and W. W. Chapman, to be read as evidence in the above-entitled suit.

February 14th, 1865.

A. M. & L. M. STARR, *Pl'ffs*,
By CHAPMAN, *Att'y.*

Which is indorsed:

Acknowledged service of a copy of the within notice this 14th day of February, 1865.

GROVER & PAGE,
of , *Att'ys for Defendant.*

A. M. and L. M. Starr *vs.* B. Stark. Notice. 18th Feb'y, 8 o'clock

STATE OF OREGON, *Multnomah county, ss:*

In pursuance of the notice here attached, the depositions of Geo H. Flanders and Wm. M. King were taken before me, H. C. Coulson, county clerk, at clerk's office of said county, on the 18th
181 day of Feb'y, A. D. 1865. Pl'ff appearing by Chapman & Holbrook, his att'ys, and defendant by Wait, his att'y; commencing at 8 o'clock a. m. of said day. By consent of parties a recess was taken until 9½ o'clock a. m., same day, and then the taking of depositions resumed.

Geo. H. Flanders, of lawful age, being duly sworn, deposes and says as follows:

Questions by pl'ff:

1st ques. Are you acquainted with the parties in this suit? If so, how long have you been so acquainted?

Ans. I am acquainted with the parties. I first knew Mr. Stark in Newburyport, Mass., in 1848.

2 ques. When did you first see him in Oregon?

Ans. In August, 1849.

3 ques. Where was he residing at that time?

Ans. I can't tell where he was residing.

4 ques. How long was he here in 1849?

Ans. He came up from California in August, 1849, and went down with me in November, 1849.

5 ques. During the year 1850 was Mr. Stark residing in Oregon? If so, at what time?

Ans. He was here in June, in 1850. He was not here before that to my knowledge.

6 ques. During the year 1850, while he was here, where did he sleep, make his home and reside?

Ans. I believe he slept in the store of Couch & Co., on
182 Couch's claim. I don't know where he got his meals.

7 ques. Do you recollect at what time in 1850 he went down to California?

Ans. I think he came up on the Carolina and went back on her in June.

8 ques. During the year 1850 do you know of Mr. Stark's residing anywhere except at the store of Couch & Co., while he was in Oregon?

(Objected to as leading by d'f't counsel.)

Ans. I don't know where he did reside at that time.

9 ques. State if you have any knowledge or information respecting a business house in California, of which Benj. Stark was a member, or had any connexion; and if so, state what that knowledge is.

(Objected to as immaterial, by def's counsel.)

Ans. There was such a house in San Francisco as Stark & Co., of which Benj. Stark was a member.

10 ques. State when you first knew of the existence of that house, and how long it continued, and, if you know, who was the superintending member thereof, and where the different members resided.

(Objected to as above.)

Ans. I knew of the existence of the house in 1849. I knew it was in existence in May or June, 1850; how long after I do not know. Benj. Stark was the superintending member in San Francisco.
183 I suppose Stark resided in San Francisco; Sherman in New York; Couch in Portland.

11 ques. State whether you have any knowledge or information respecting the time of dissolution of said firm.

(Objected to as above.)

Ans. I do not know.

12 ques. State whether you have any knowledge or information respecting whether that firm failed or not; and if so, when?

(Objected to as above.)

Ans. I knew it failed, but cannot tell when.

13 ques. State whether you are acquainted with a tract of land in the city of Portland known as the Stark tract.

Ans. I am.

14 ques. State your knowledge of the residence of Benj. Stark on said tract, when it commenced and what house he occupied as a residence, and who was the owner thereof.

(The two last clauses are objected to as above.)

Ans. I know he resided on said tract, but in what year I cannot tell. He boarded at the City Hotel.

15 ques. Who kept the City Hotel at the time he boarded there?

(Objected to as above.)

Ans. I don't know who kept it.

16 ques. State whether Benj. Stark did or did not reside in San Francisco during the existence of the firm of Stark & Co. at that place.

184 (Objected to as leading by def't counsel.)

Ans. I suppose he was a resident of San Francisco if he was doing business there.

17 ques. From your knowledge of Benj. Stark, during the existence of that firm of Stark & Co. in San Francisco, where did he reside?

(Objected to as leading and seeking to entrap the witness into a statement of residence in California, while his home was in Oregon.)

Ans. My judgment is that he was a resident of California while he done business there.

(Ans. objected to by def't's counsel.)

Cross-examination—by A. E. Wait, esq., att'y for defendant:

1 ques. Was the defendant a resident of Newburyport, Mass., in 1849.

(Objected to because it does not discriminate between the time when the testimony would relevant or irrelevant.)

Ans. I don't know.

2 ques. Is it true that you were acquainted with Benj. Stark in Newburyport in 1849?

Ans. I was not; I was mistaken in saying 1849; I should have said 1848. He was a resident of Newburyport at that time, that is, 1848.

3 ques. Where did Benj. Stark claim his residence to be when you became acquainted with him?

185 I don't know; I never heard him say.

4 ques. Did the defendant come to Oregon in your vessel in 1849?

Ans. He came on the Modona. I only took charge of the vessel going down.

5 ques. Where did the defendant claim his residence to be in 1849, when he came to Portland?

(Objected to as immaterial.)

Ans. I don't know.

6 ques. You have stated in your examination-in-chief that the

def't slept on the Couch claim during a part of the year 1850. Did he board on that claim at that time?

Ans. I don't know. I know he boarded at the City Hotel, which is on the Stark claim, but when I don't know.

7 ques. Was there any boarding-house on the Couch claim in 1850?

Ans. I don't know.

8 ques. How long have you known the defendant, Stark, to reside on his claim in Portland?

(Objected to as not discriminating between relevant and irrelevant evidence.)

Ans. I don't know.

9 ques. Do you know of his having resided on said claim for the last ten years prior to 1860?

Ans. I do not know.

10 ques. Do you know of his having resided there for the
186 last eight years prior to 1860?

(Objected to as irrelevant, immaterial, and not discriminating between evidence relevant and irrelevant.)

Ans. I don't know.

11 ques. Do you know of his having resided upon his land claim in Portland as many as seven years prior to 1860?

Ans. The year before he was elected to the legislature, he was a candidate for the legislature and was defeated. I know that at that time he was a resident on his land claim in Portland, and has been so since.

12 ques. What amount of improvements has the defendant placed upon his land claim in Portland?

Ans. I should say between forty and fifty thousand dollars.

13 int. How long after the def't went to California in 1850 was it till his return to Oregon?

Ans. He was here when the Emma Preston was here; I think it was in the fall of 1850.

Examination-in-chief resumed:

1 ques. At that time you say he ran for the legislature and was defeated, then living upon his claim, state what house was his residence.

Ans. I don't remember what house he lived in.

GEO. H. FLANDERS.

187 Wm. M. King, of lawful age, being duly sworn, says as follows:

Ques. Are you acquainted with the parties in this suit, and if so, how long have you been acquainted with them?

Ans. I became acquainted with Mr. Stark in 1849, and have been acquainted with him ever since. I have been acquainted with Messrs. Starr since they came here in fifty-one or two.

2d ques. State whether you are acquainted with the tract of land in the city of Portland known as the Stark tract.

Ans. I am.

3d ques. How long have you been acquainted with the Stark tract, and who were the residents thereof at the time of your first acquaintance?

(Objected to as immaterial.)

Ans. I became acquainted with that portion of the Portland land claim which was afterwards designated as the Stark tract, in 1848. I do not now remember of any other person residing on that portion, except Mr. Warren at that time.

Ques. 4. Have you or have you not known of Benj. Stark being a resident upon that tract at any time prior to the first of Sept., 1853? If so, state when you first so knew him, and how long such residence continued prior to that time.

(Objected to as leading and multifarious.)

188 Ans. I do not know of his residing on that tract until some time in fifty-three. I could not state definitely, but it was before or after the first of Sept. of that year.

Ques. 5. State where you reside and how long you have resided in the place.

Ans. I reside in the city of Portland; I have resided here since the 20th of Sept., 1848.

Ques. 6. State what have been your *your* means and opportunities of information respecting the residents upon that part of the Portland claim now known as the Stark tract.

Ans. My means of information have been good, both official and private. I frequently passed the tract. I took acknowledge of deeds on that tract. I was conversant with the transactions of the people throughout the city, including that tract.

Ques. 7. At the time you state you first knew Ben. Stark as a resident of the tract referred to, what house did he reside in?

Ans. His residence was in a house—as near as I can designate the house it was on 2d st., what was then called one of the Molthrop houses.

Ques. 8. If Benj. Stark had resided upon the tract referred to prior to the time you mentioned, would you have known it?

(Objected to as leading.)

189 Ans. I should most likely have known it, had he kept a dwelling-house.

Ques. 9. At any time prior to Sept., 1853, was there or not a town or place of trade within the boundaries of what is now known as the Stark tract?

(Objected to as immaterial.)

Ans. I did not know of any town or place of trade within the tract, independent of the town or the city of Portland.

Ques. 10. State how much of a town, in point of improvements, and what description of business was done within the boundaries of that tract, and how early it so appeared.

(Objected to as immaterial.)

Ans. There was considerable building being done in 1850, continued on increasing in 1851, 1852, and 1853, such as stores and taverns, within that time mentioned.

Ques. 11. State when the first stores and tavern were located thereon.

(Objected to as above.)

Ans. I think in the fore part of 1850, the Warren House was erected. I think the latter part of fifty or the fore part of fifty-one a dwelling-house was built, and afterwards converted into a tavern, and called the City Hotel. The stores that were built *were built*, as stated before, were built in fifty-one, fifty-two, and fifty-three—
190 might have been some of them built in 1850. I cannot remember now definitely.

Ques. 12. Did you know the Winter and Latimer storehouse? and if so, can you state when that was erected and when occupied with a store?

(Objected to as above.)

Ans. I did know the Winter & Lattimer storehouse. I think that was erected in 1849 or early in 1850. I discharged a vessel from China at that storehouse early in 1850. Mr. Norris opened a store there soon after the storehouse was finished. Another storehouse was built to store the goods from the vessel that the other storehouse would not hold. That was across Ft. st towards the river on block 81, on lot one or two, or the north side of the block.

13 ques. State, if you know, who built said warehouse.

(Objected to as above.)

Ans. It was built by Mr. Norris for Winter & Lattimer.

Cross-examination—by A. E. Wait, att'y for def't:

1 ques. How many stores were there on the Stark tract in 1853?

Ans. From my best recollection, I think there were four or five.

2 ques. Who kept them?

191 Ans. I cannot now say.

3 ques. How many dwelling-houses were there on that tract in 1853?

Ans. There might have been fifteen, there might have been twenty-five, I cannot state very near.

Ques. 4. Do you know of def't's boarding at either *at* the City Hotel or Warren House prior to his residency in one of the Molthrop houses, as stated by you in your examination-in-chief?

Ans. I do not.

Ques. 5. What year was the def't elected to the legislature from Washington county, of which the city of Portland was then a part?

Ans. He was elected at the election of fifty-two.

Ques. 6. Was he or was he not a candidate from the same district for the same office prior to that time?

Ans. I think not. I never knew of his being a candidate against myself only the time he was elected, and I was a candidate every year previous to this time, (1852,) and never knew of his running against me until he was elected.

Ques. 7. Was the def't a candidate for nomination prior to fifty-two?

Ans. I do not know.

192 Ques. 8. How long have you known the defendant?

Ans. I think it was the fore part of August, 1849, I first saw Mr. Stark; I was very sick at the time; did not become much acquainted with him until after I returned to the legislature at Oregon City, the latter part of August, 1849. Then I became better acquainted with him.

Ques. 9. Have you been acquainted with him from that time to the present? and if so, where?

Ans. I have been acquainted with him in the city of Portland, when he was here.

Ques. 10. Where has the def't resided, so far as you know, since you became acquainted with him in 1849, in the city of Portland?

(Objected to as irrelevant, all that part of answer which refers to a residence since Sept., 1853.)

Ans. Until the time of his departure, some time in the fall 1849, for the east, I do not know that he had any particular place of residence; he was gone from Portland much of the time until his return to the east. He was gone then until some time in 1850. I saw him on his return in Portland. He then went to California, and was there, I should think, to the best of my recollection, about a year or more,

193 doing business there—that is, he told me he was doing business there. I saw him in Portland while he was doing business in California. I could not state of his having any fixed place of residence until the time that I stated his residence to be in one of what was called the Molthrop houses. I think he resided there until the time he started for Washington city. Where he resides I do not know.

Ques. 11. Previous to 1853, what part of Oregon did he reside in when in Oregon?

(Objected to.)

Ans. Mostly in the city of Portland, I think.

Ques. 12. When did you first learn of his claiming interests in Portland?

(Objected to as irrelevant.)

Ans. I heard in 1848, soon after I came here, that there was a man by name of Stark somewhere in the east or at sea, that claimed an interest in the Portland town tract.

Ques. 13. Do you not know that the def't claimed Portland as his home when you became acquainted with him in 1848.

(Objected to as irrelevant.)

Ans. I do not know that we had any conversation on that point, whether he should make Portland his home or not. But I know he claimed that he had an interest or a claim in the Portland tract.

194 Ques. 14. Have you not understood from his acts and doings that he has regarded Portland as his home from the time you first became acquainted with him?

(Objected to as irrelevant.)

Ans. I so understood after he closed his business in California.

Ques. 15. How early was the def't a citizen of Portland, so far as you know or have reason to believe?

Ans. I believe him to be a citizen of Portland as soon as he came here to live, after he left California.

Ques. 16. What was the def't doing in Portland prior to the time you say he resided in one of the Molthrop houses?

Ans. There was a portion of the time he was engaged in settling up the old Co.'s business at Mr. Couche's store, but how long they were engaged in that I could not say. I do not know any particular business Mr. Stark was engaged in. I think he was selling lots after the time of the compromise between him and Mr. Lownsdale. That is all the business that I recollect of his doing at that time.

Ques. 17. When did he commence the practice of law in the city of Portland?

Ans. I do not recollect.

Ques. 18. How early do you recollect of his selling lots in the Stark tract?

195 Ans. I could not say how early he commenced. I do not recollect.

Ques. 19. Had he not sold the most of the lots on which buildings had been erected in 1853?

(Objected to because it is not the best evidence; the writings will show.)

Ans. I do not know how many lots he had sold. There were some lots reserved in the compromise between Lownsdale and Stark that had been previously sold by other parties, but the proper time of each I cannot state.

Ques. 20. What relationship do you bear to the pl'ffs?

Ans. None that I know of; their brother married my daughter.

Ques. 21. What amount of improvements in value has the def't placed upon his land claim?

Ans. I should say, so far as I know, some forty thousand dollars.

Ques. 22. State, if you know, to whom the pl'ffs have looked for title to the property claimed by them in block 81 since the compromise mentioned by you between the def't and Lownsdale.

Ans. I don't know.

Ques. 23. Was the def't a resident of Portland in 1852 when elected to the legislature?

Ans. So considered, I think.

Ques. 24. In what particular part of Portland did he reside at that time?

196 Ans. I do not know where he boarded or where he slept at that time. I could not fix his residence any different from what I have.

Ques. 25. Was he a resident of Portland in 1851?

Ans. I think he was here a considerable part of time *of time*. I saw him mostly at Capt. Couche's store. I suppose him to be a resident since he came up from California.

Ques. 26. About how long was that after the compromise?

Ans. To my best judgment now, I think it must be six months.

Examination-in-chief resumed:

Ques. 1. Did you hear the rumor of the failure of the Shermans and Stark in San Francisco? If so, did you consider Stark a resident of California until about that time?

(Objected to as leading, irrelevant, and calling for opinion and not fact.)

Ans. I heard the statement of the failure of that company from Sherman's brother. I considered him a resident of California until he came back from California.

2 ques. Do you or not know of Benj. Stark coming to Portland in the Carolina in 1850, and returning in a short time on the same
197 steamer? and if so, was it not at a subsequent time of his arrival in Portlond when you considered him to have become a citizen of Portland?

(Objected to as above.)

Ans. I knew of his coming here, I think, on the Caroline. It was at a subsequent time, I supposed, he came here to reside.

Ques. 3. State whether to your knowledge Benj. Stark, at any time between the first of Sept., 1849, and the first of Sept., 1853, had the exclusive possession or control of the tract of land now included within the boundaries of the *the* Stark tract.

Ans. He had not. There were many persons residing on that tract owning property there.

Ques. State if you know of the pl'ffs having erected a shop or any other improvements upon block 81; and if so, state as near as you can the position and location of such improvements.

(Objected to as immaterial.)

Ans. They have a shop, and they have commenced erecting a wharf; and foundation to storehouse and likewise for stores remains in an unfinished state.

Ques. Have you any recollection of the pl'ff's erecting or having a a tin shop in the year fifty or fifty-one? If so, state what is your
198 recollection on that subject.

(Objected to as immaterial.)

Ans. They had a shop there I think in fifty-one. It is not occupied now as a tin shop.

Cross-examination:

Ques. 1. Who built the shop on block 81?

Ans. I could not say.

Ques. 2. When did you learn of Sherman of the failure of Stark & Co. at San Francisco?

Ans. I think it was some time in the latter part of 1850.

Ques. 3. Had W. W. Chapman or Stephen Coffin in 1850, or at any time since, have the exclusive possession and control of their respective land claims upon the Portland tract?

Ans. I think not.

Ques. 4. State if any one other than the def't, Stark, has had the possession, ownership, and control of his land claim, known as the

Stark tract, since the compromise before referred to by you between Lownsdale and Stark.

Ans. I know of none attempting to control that tract except those who had purchased of some of the Portland town proprietors, and they only attempted to control what they had purchased.

199 Ques. Has not the def't, Stark, been the sole claimant and holder of the Stark tract since the compromise referred to by you?

(Objected to because the question is complicated, and the word holder has a double meaning—may mean actual possession, and may mean constructive possession.)

Ans. I had supposed him to be the sole claimant of said tract as a land claim.

WM. M. KING.

200 STATE OF OREGON, *Multnomah county, ss:*

I, H. C. Coulson, clerk of said county, in said State, do hereby certify that the foregoing depositions of Georg. H. Flanders and Wm. M. King, summoned before me to testify on the part of the plaintiffs in the above-entitled cause, were taken before me on the 18th day of February, 1865, at county clerk's office of said county, between the hours of 8 o'clock a. m. and 4 o'clock p. m. of said day, W. W. Chapman and A. Holbrook appearing for complainants, and W. W. Page and A. E. Wait for defendant. The testimony of said witnesses was reduced to writing by Cyrus Dolph, by consent of parties, under my direction; that before proceeding to the examination of said witnesses, they were each duly sworn by Quincy A. Brooks (my legally authorized and appointed deputy) to testify the truth, the whole truth, and nothing but the truth, and the deposition of each read to each, respectively, and then by him signed.

In testimony whereof, I have hereunto set my hand and official seal this 19th day February, A. D. 1865.

[L. S.] H. C. COULSON,
Clerk, Multnomah County, Oregon.

Clerk's fees, taking dep., $14.

[U. S. revenue stamp, 5-ct.]

201 On the foregoing is the following indorsement:

Circuit court. A. M. and L. M. Starr *vs.* Benj. Stark. Depositions of Flanders and Wm. M. King, filed Feb'y 20, 1865.
Opened in open court. H. C. COULSON, *Clerk.*

No. 36. Filed in the supreme court Sept. 2d, 1865.
R. WILLIAMS, *Clerk.*

202 In the circuit court of the State of Oregon for Multnomah county.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, defendant. } Suit in equity.

I, William W. Chapman, attorney for the pl'ffs in the above-entitled suit, being sworn, on oath say that J. L. Parish is a material

witness for the pl'ffs in the above suit; that when notice of taking said Parish's deposition was given for Friday next, it was supposed he could conveniently remain in Portland till that day, but that said witness informs him that he will leave for Salem, where he resides, on Thursday next, and that unless the time for taking his deposition is shortened, it will not be possible to take it.

W. W. CHAPMAN.

Subscribed and sworn to before me this 2d day of May, A. D. 1865.
ERASMUS D. SHATTUCK, *Judge.*

203 STATE OF OREGON, *County of Multnomah, ss:*

Upon the within affidavit it is ordered that the deposition of the within named J. L. Parish be taken upon short notice, to wit, on the 3d day of May, 1865, at the clerk's office in the city Portland, at 10 o'clock a. m., before the clerk of the circuit court. Copy of this order to be served on the defendant's attorneys forthwith. At chambers, in Portland, May 2d, 1865, 2¼ o'clock p. m.

ERASMUS D. SHATTUCK, *Judge.*

The defendant and his attorneys are notified that in pursuance of the order foregoing, on the 3d of May, 1865, at 10 o'clock a. m., before the clerk of the circuit court of said county, at the office of said clerk, the pl'ffs will take the deposition of said J. L. Parish.

May 2d, 1865.

A. M and L. M. STARR, *Pl'ffs,*
By W. W. CHAPMAN, *Att'y.*

204 STATE OF OREGON, *Multnomah county, ss:*

I, William W. Chapman, being sworn, on oath say that on the afternoon of the 2d inst., he delivered to Page & Grover, attorneys for the defendant in the annexed entitled suit, a copy of the annexed order and notice.

W. W. CHAPMAN.

May 3d, 1865.

Subscribed and sworn to before me May 3d, 1865.
H. C. COULSON, *Clerk.*

[U. S. revenue stamp, 5 ct]

On the foregoing is the following indorsement:

A. M. and L. M. Starr *vs.* Benj. Stark. Notice to take deposition and af'd't.

Filed May 3d, 1865. H. C. COULSON, *Clerk.*

205 In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, def't.

STATE OF OREGON, *Multnomah county, ss:*

Deposition of Josiah L. Parrish, a witness, and subpœnaed on part of plaintiffs, to be read in evidence in the above-entitled cause when the same shall come on to be heard, taken before me, H. C. Coulson, clerk of said circuit court, at office in Portland, Oregon, on 3d day of May, 1865, between 10 o'clocka. m. and 4 o'clock p. m. said day, Chapman appearing for complainants, and Wait appearing for defendant. The following interrogations propounded to said witness, and answers thereto made, to wit:

J. L. Parrish, being duly sworn, deposes as follows, to wit:

Int. 1st. State your age and residence.

I am 59 years of age; residence, Marion county—Salem.

206 Int. 2. Are you acquainted with a tract of land within the city of Portland, Oregon, known as the Stark tract?

Ans. I am.

Int. 3. Are you acquainted with the parties to this suit?

Ans. I am.

4. State what you know respecting the residence of the defendant, Benjamin Stark, upon the Stark tract between the first of Sept., 1849, and first of Sept., 1853, and, so far as you know, where he resided during that time.

Ans. I have no knowledge, or rather I have no recollection, of Mr. Stark's residing on said tract between 1849 and 1852. To my knowledge Mr. Stark was absent from Portland most of the time from Sept., 1849, to Oct., 1852.

Int. 5. State your opportunities for knowing the residence of persons upon the tract referred to during the time mentioned before.

Ans. I lived in Portland with my family from last of Oct., 1849, to Oct., 1850, and was in Portland more or less of the time to the fall of 1852.

Int. 6. State, as near as you can, who resided on that tract
207 from the first of Sept., 1849, till the first of Sept., 1853, and more particularly in 1849, 1850, and 1851.

Ans. I resided upon that tract in 1850, on what is called "First street," or Front street. There were some two or three merchants under the firm of Winter & Lattimer; a man by the name Hobbs, merchant; another by the name Warren kept a public house; a Dr. Griffin, dentist, had a private residence; L. A. Davis lived on the same tract; other inhabitants, that I do not now recollect their names.

Int. 7. State what time you moved upon that tract; what house you occupied; how long did you occupy it; if you rented it; of

whom did you rent it; and if you know by whom was it built; upon what block was it situate, and the particular part of the block.

(Objected to as multifarious and unnatural.)

Ans. I moved upon that tract in Sept., 1850. The house was built by Capt Molthrop, and rented of him; situated on the northeast corner of the block; the No. of the block I do not recollect; it was called the Molthrop block. The house was occupied under my lease from Molthrop to the spring of 1851.

Int. 8. If you have the means of knowing, state whether you
208 were the first occupant of the house after its erection.

(Objected to as immaterial.)

Ans. I was the first occupant of the house.

Int. 9. State, as near as you can, how often you saw Benjamin Stark, and at what time, in the year 1850 and 1851, and where you saw him, and what connexion did he then have with a residence upon the Stark tract.

Ans. I saw Mr. Stark in Portland, I think, in Aug., 1850. He had just returned, I think, from the east with a quantity of merchandise, which merchandise was put up and sold at Capt. Couch's store, on the Couch claim. I have no recollection of Mr. Stark's occupying a house on the Stark tract between 1850 and 1851.

Int. 11. State what you know of Stark's leaving Portland at any time of the years referred to.

Ans. Mr. Stark left Portland, I think, in October, 1850; he said for New York. I think he was absent a year or more.

Int. 12. Where were you residing at the time he left, as mentioned?

I was residing in the said Molthrop house, on the Molthrop block.

Int. 12. State the extent of your acquaintance at that time with the Stark tract, and whether or not Benj. Stark could of resided on that tract or had a place of residence there without your know-
209 ing it.

Ans. I was acquainted with the entire tract of what was called the Stark tract; think I know all the houses on the tract from the fall of 1849 to 1851, and have no recollection of Mr. Stark's living in or occupying any of the houses.

Int. 13. Were you acquainted at any time with a hotel upon that part, known as the "City Hotel," kept by F. De Witt? If so, state when and by whom it was built, and what you know respecting that house and its occupants.

Ans. I was acquainted with a house situated on that tract called the City Hotel. I think the first part of that house was built by a man by the name of Morrison in the fall of 1850, and occupied by De Witt; and an addition was built to the house, I think, in the latter part of 1851 or first of 1852.

Cross-examination:

Int. 1. How long have you been acquainted with the Benjamin Stark?

Ans. I think since the fall of 1845.

Int. 2. State, if you know, whether at any time he became
210 acquainted with the Portland land claim. If so, when?

(Objected to as calling for evidence prior to his residence.)

Ans. I cannot state. I don't know when he became acquainted with the Portland land claim.

Int. 3. State, if you know, whether the defendant was the reputed owner of the Portland land claim.

(Objected to as immaterial.)

Ans. Not to my knowledge.

Int. 4. Were you, in 1849, 1850, and 1851, better able to determine the residence of def't, Stark, his intention and whereabouts, than was John H. Couch?

Ans. I don't know as I was.

Int. 5. Could you as well determine in relation to these things as John H. Couch?

(Objected to as irrelevent, immaterial, incompetent on cross-examination; no foundation laid for such question.)

Ans. I don't know as I could.

Int. 6. Are you sure that the goods brought to Portland by Stark, mentioned by you, were placed in Couch's store?

Ans. I am not. I think now they were not, but in a building somewhat contiguous to his old storehouse that had been more
211. recently built.

Int. 8. Who owned that building?

(Objected to as immaterial.)

Ans. I don't know by whom it was built, but I think Couch was the principal owner.

Int. 8. By whom or in whose name were the goods sold?

Ans. I don't now recollect the firm, but I think Stark was connected with it.

Int. 9. Who went into the house after the expiration of your lease on the Stark tract?

Ans. I am not positive; to the best of my recollection it was Maj. Tucker, of the U. S. army.

10. State, if you know, if the def't lived in that house with Maj. Tucker.

Ans. Not to my knowledge.

Int. 12. State, if you know, where in Portland the def't has resided at any time.

(So much of the above question as calls for evidence before Sept., 1849, and after Sept., 1853, objected to as immaterial.)

Ans. I think he resided, in 1854 and some time afterwards, on what's called the Stark tract; I think 1860.

Int. 13. Where did the def't reside in the spring, summer, and fall of 1851 and the winter of 1852 and '3?

212 Ans. I don't know where he did reside. To my best recollection, Mr. Stark left Portland about Oct., 1850. Where he was in 1853 I cannot say. I think I saw him in Portland in 1853.

Int. Was he in Portland in 1852?

Ans. I have now no recollection of seeing him in Portland in 1852.

Int. Was you in Portland often in the spring, summer, and fall of 1852?

Ans. I was, I presume, as often as once a month. I might state further that I may have seen him in 1852, but don't now recollect it.

Int. Do you remember of his being elected to the legislature from Washington county, of which Portland was a part, in 1852?

Ans. I recollect of his being elected to the legislature from Washington county, but my impression was it was 1853 or 1854.

Int. Don't you remember of his serving in the legislature, at a special session, in the summer of 1852, called by Gov. Gains?

Ans. I think Mr. Stark served in the legislature at the special session called by Gov. Gains. I would not now say the year.

Int. Do you not remember that the def't served in the legislature at the regular session of 1852 and 1853?

213 (Objected to as immaterial.)

Ans. I recollect of seeing Mr. Stark in the legislature.

Int. Where did the def't reside at the time he was elected and served in the legislature from Washington county?

(Objected to as irrelevant and immaterial.)

Ans. I presume somewhere in Portland, but I have now no recollection where.

Int. Where has been the def't's home and residence since you have been acquainted with him?

Ans. When in Oregon, as far I know, it has been in Portland.

Int. When the def't went away from Portland in Oct., 1850, and told you that he was going to New York, did he state when he would return, or what his business was?

Ans. He may have stated when he was to return, which time I do not now recollect. My impression is that he informed me that he was going to settle up business in his father's or family estate.

Int. Was he at that time the claimant, under the donation law, of the Stark tract referred to by you?

(Objected to because it calls upon the witness to state a conclusion of law, not a matter of fact, as to his residence and cultiva-

214 tion.)

Ans. To the best of my recollection, at that time the Stark tract referred to was in dispute between said Stark and Lownsdale and Coffin.

Int. Who was the owner of the land upon which the house mentioned by you, kept by De Witt, was situated?

Ans. The De Witt House was on the Stark tract, which was then in dispute—which, I suppose, was in dispute as above.

Int. Who was the owner of the land upon which was situate the

house in which you lived on the Stark tract at the time you lived there?

(Obj. to because the question calls for evidence of title in fee, only proven by record evidence, except the presumption that all title is in the United States until the contrary is shown by a patent or certificate, and because the question is in not distinguishing between the ownership of the fee and the occupant of a lot or block.)

Ans. Capt. Molthrop was the reputed owner, and in possession.

Int. State, if you know, whether Capt. Molthrop had ever received any deed or conveyance, or a guarantee, for the conveyance of the land upon which that house stood.

215 Ans. I don't know that he had.

Int. Do you know where the def't boarded when in Portland in 1849, 1850, 1851, 1852, and 1853?

Ans. I don't.

Int. Was he a single or married man during this period?

Ans. I think he was single.

Int. Where did the plaintiff reside in 1849, 1850–'1–'2, and '3?

Ans. I think the plaintiff did not live in Portland in 1849, but 1850–'1–'2, and '3 they lived on what was called the Stark tract.

Int. When did the pl'ffs come to Oregon for the first time?

Ans. I cannot say; I have no recollection of seeing of them before 1850.

Int. Did you see them in 1850?

Ans. I am not positive; I think I did in the fall of 1850.

Int. When did you first know them to have a dwelling-house on the Stark tract?

Ans. They dwelt in their tin shop in the fall of 1850.

Int. Did they get their meals there?

Ans. They did.

Int. Did you ever eat with them, and did you ever see them eating there? and if so, on how many occasions?

216 Ans. To my recollection I never eat with them. I have seen them cooking and eating there. The number of times I cannot state. It was the reputed home, and his residence.

Int. How long did that tin shop continue their reputed residence?

Ans. While I knew them, in the fall of 1850–'1–'2.

Int. Who ever told you that that tin shop was the residence of the plaintiffs?

Ans. I knew it from observation.

Int. You stated that it was their reputed residence; now who represented to you that such was their residence?

Ans. They themselves; they had no other boarding-house to my knowledge.

Int. Did any one else represent to you that such was the residence of the plaintiffs? If so, who?

Ans. No one else to my recollection. I was connected with another tin shop in town, and knew their situation.

Int. How many times did you see them eating and cooking there?

Ans. I cannot state, but I have seen them eating and cooking there more than once.

Int. Did you know of the defendant having an office on the Stark tract?

Ans. I have no knowledge of his having an office on the tract in 1849 or 1850, or '51.

217 Int. State, if you know, whether the defendant regarded Portland, Oregon, as his residence from 1847 to 1856.

(Objected to because question calls for evidence not relevant or material, and because it does not confine the evidence of residence to the Stark tract in Portland, and because it does not confine the evidence to the defendant's residence to the period of four preceding the date of his certificate, and because it calls for the defendant's opinion or declaration.)

Ans. I don't know as he regarded Portland as his residence.

Int. Do you know of his residing anywhere else, or claiming any other place as his home or residence during that time?

Ans. I do; he regarded his home in New York, and here as a transient person, to the best of my knowledge, from the time I first knew him until after he returned from the east, as above referred to.

Int. How do you know that he regarded his home in New York from 1847 to 1850, or at any time?

Ans. From his own statement that he regarded New York as his home, and that he was here as a transient trader.

218 Int. Did the defendant tell you that his home was in New York?

Ans. I could not say positively as it was in New York. I think now that it was in Boston; at any rate some of the eastern cities.

Int. Did the defendant at any time since the first of Sept., 1849, state to you that his place of residence was anywhere out of Oregon?

Ans. I have no recollection of the def't stating to me that his residence was anywhere, but that I think in Oct., 1850, he stated that he was going home.

Int. Did he ever, at any other time, state anything showing that his home was not in Oregon? If so, what did he state?

Ans. Yes, every time that I had any conversation with him he called it his home; that is, any conversation in regard to this matter, and I always regarded his home somewhere in the east, and he here a transient trader, until he returned from the east after leaving in Oct., 1850.

Int. What did he say about any point in the east being his home?

Ans. I cannot say. Often, in speaking of his family and
219 friends and business, he spoke of it as his home.

Int. Did you ever hear the defendant say that Oregon was not his home?

Ans. I don't know that I ever did. I don't recollect that I ever did.

Int. Who was present at any one of the conversations with Mr. Stark of which you speak?

Ans. Capt. Crosby, A. E. Wilson, W. W. Raymond, Mrs. Raymond, my own family, wife and children.

Int. Had Stark any family from the time that you first became acquainted with him up to the time of his marriage?

Ans. I think he professed to have parents and sisters; I am not positive, brothers.

Int. Did he own any property in Portland in 1850, at the time he left?

Ans. I don't know definitely; my opinion is that he had some interest in a store—what, I don't know.

Int. Had he anything else?

Ans. Don't know that he had.

Int. Did you understand that he intended to return to Oregon when he left in 1850?

Ans. I think I did, within a year or two; depended upon settling up his business.

Int. What did you understand he was going to return here for?

Ans. I supposed he was to return here a trader, as he for-
220 merly had been occasionally.

Int. Did he tell you that he was going to return here as a trader?

Ans. I don't recollect that he did.

Int. Did you see the defendant in 1849?

Ans. I don't think I did.

Int. Do you know whether the plaintiffs claimed the land upon which the tin shop referred to by you was situated?

(Objected to as immaterial.)

Ans. I think they did.

Int. How did they claim it?

Ans. I think from purchase.

Int. Of whom?

Ans. I am not able to say; I suppose from the town proprietors.

Int. How long have you known the def't, Stark, to reside upon the Stark tract in the city of Portland? From what time to what time?

(Objected to calling for evidence since the date of the def't's certificate.)

Ans. From the time of his marriage till he went away.

Int. Did the def't reside upon the Stark tract from 1854 to 1861—to the time he was appointed senator for the State of Oregon in the United States Senate?

Ans. I could not say that he did. I recollect of being at
221 his residence in 1858. I then lived in Portland, and was at his residence.

Int. How many years then do you know of the defendant having resided upon that tract?

Ans. I don't know that he ever resided upon that tract a full year at any one time.

Int. You have stated that he resided upon that tract from 1854

until he went east. What time do you refer to as the time he went east?

Ans. I didn't make such a statement.

Int. You have stated that the defendant resided upon the Stark tract from the time of his marriage to the time he went away. What time do you refer to as being the time he went away?

(Objected to as immaterial, calling for evidence of residence since the date of the defendant's certificate.)

Ans. When he went away as United States senator. This I give as a matter understood by myself, not from real personal knowledge. I do not know that he ever occupied any one house on said tract six months at a time, but supposed his residence was on said tract.

Int. Did you see the defendant oftener between 1854 and 1860 than you had prior to that time?

(Objected to as immaterial.)

222 Ans. I think I did, for I lived in Portland in 1857 and 1858, and did not after the fall of 1851 up to 1857, but was in Portland often between the fall of 1851 and 1857.

Int. Did you know of the defendant's residing in but one house on that tract at any time?

Ans. I am not positive; my impressions are that I have known of his residing in two houses on that tract.

Int. What two houses were they?

Ans. My impression is that he lived in one of the said Molthrop houses, or in a house near there in 1854, and then in a house somewhere in that vicinity in 1858.

Int. Who resided on the Couch claim in 1849, 1850, and 1851?

Ans. I think John H. Couch in 1849, and W. S. Ogden also in 1849, and another young man, all of which boarded at my house, "in the Crosby House," in the winter of 1849 and 1850; and I think there were others who lived on the Couch claim; said Couch and Ogden lodged at their stores. In 1851 Couch lived on his claim, and some clerks—I think Col. Backinstoss. I think there were others, but I don't now recollect who they were.

223 Int. Were there any dwelling-houses on that claim besides Couch's and Backinstoss's until after 1852?

(Objected to as immaterial and irrelevant.)

Ans. I don't now recollect.

Int. Was there any boarding-house on the Couch claim up to 1853 that you know of?

Ans. I recollect now that there was a boarding-house on that claim, kept by Baldro, which, I think, was built by Capt. Couch in 1850.

Int. How long was a boarding-house kept there?

Ans. I could not state how long.

Int. Did the def't ever board with you at any time?

Ans. I have no recollection that he did.

Int. Did you hear the defendant say, at any time, that his residence was not in Portland, Oregon?

(Objected to as irrelevant, immaterial, and been asked before.)

Ans. I have no recollection of hearing him say that he claimed a residence in Portland till after 1854.

Int. Did you ever hear the def't say, at any time, that his residence was not in Portland, Oregon?

Ans. I don't know that I did.

Int. What amount of improvements has the def't placed upon the Stark tract?

224 (Objected to because it does not call for evidence of improvements made by def't as a settler between the first of Sept., 1849, and first Sept., 1853, the date of his certificate.)

Ans. I don't know at all the extent of his improvements; I know there is a brick house—"a business house"—on said tract, said to be built by him; his other improvements I have not personal knowledge of; who built the house he occupied in 1854 I cannot say.

Int. Do you know of his having made any improvements upon that tract in 1849, '50, '51, '52, and '53?

Ans. I don't now recollect of any.

Int. Do you know of any residence by the def't in Oregon at any time except upon the Stark tract?

(Objected to as immaterial.)

Ans. No.

Direct examination resumed:

Do you know in what vessel or ship the def't came to Oregon in at the time that you speak of having seen him, about August, 1850?

(Objected to as immaterial.)

225 Ans. I don't now recollect what vessel.

Do you remember to have seen the steamer Carolina in the port of Portland in 1850? and if so, what recollection have you of the def't in connexion with that steamer's arrival in Portland?

Ans. I remember to have seen the steamer in the port of Portland a number of times in 1850; on her first trip I was confined to my house, sick. I have no recollection of any connexion with the first arrival of that steamer and the defendant.

Int. In 1849, 1850, and 1851, was or not the Stark tract a part of the town of Portland, and was it or not at that time occupied as a town place of trade and commerce?

Ans. I think it was.

Cross-ex:

Int. What trade and commerce was carried on, on this Stark tract, during these years?

Ans. To the best of my recollection there was a firm called Winter & Lattimer in 1850, also one, of whom a man by the name of

226 Hobbs was the chief manager; I don't recollect as there was any other; there may of been.

Ex.-in-chief.

Int. Was you acquainted with a young man by the name of Sherman in 1850, professing to act as agent of Benj. Stark?

Ans. I was.

Int. Do you remember of his having an office on Front street anywhere? and if so, do you know when that office was built?

Ans. I don't recollect about the office, where it was situated.

Cross-ex:

Int. How often did you see the def't in Portland in the summer of 1850?

Ans. From August, 1850, to October I may of seen him every day; previous to that time, in June, I was absent to the third of July; after that, some ten days, I was taken sick and confined pretty much to my house until in August.

Int. Have you any means of knowing whether the defendant was in Portland in 1849?

He may have been in Portland in the fore part of 1849; the
227 latter part of '49 I lived in Portland, and have no recollection of seeing him; presume I would if he had been here.

J. L. PARRISH.

In circuit court of the State of Oregon for the county of Multnomah

A. M. and L. M. STARR
vs.
BENJAMIN STARK.

STATE OF OREGON, *Multnomah county, ss:*

In pursuance of affidavits, order of judge of said court, and notice hereto attached, the deposition of Joseph L. Parrish, a witness, and summoned on part of plaintiffs, was taken before me, H. C. Coulson, clerk of the circuit court of the State of Oregon, for the county of Multnomah, at my office in said county, between the hours of ten o'clock a. m. and four o'clock p. m. of May 3d, 1865; W. W. Chapman appearing for plaintiffs, and A. E. Wait appearing for defendant.

And I hereby certify that said witness was first duly sworn to
228 testify the truth, the whole truth, and nothing but before proceeding to the taking of testimony, and that the foregoing interrogatories propounded to said witness, and the answers thereto, were reduced to writing by Daniel Romlet in my presence and under my direction, and the said deposition carefully read over to said witness, and by him signed, in my presence.

In testimony whereof, I have hereunto set my hand and seal of said court this 3d day of May, A. D. 1865.

[SEAL.] H. C. COULSON, *Clerk.*

[5-ct. U. S. stamp.]

On the foregoing is the following indorsement:

In circuit court. A. M. and L. M. Starr *vs.* Benj. Stark. Dep. of J. L. Parrish opened and filed in open court this 10th day of May, 1865. H. C. Coulson, clerk.

No. 36. Filed in the supreme court Sept. 2, 1865.

R. WILLIAMS, *Clerk.*

229 To William Warren, of Umpqua: In the name of the State of Oregon you are commanded to appear in the circuit court of the State of Oregon, for the county of Multnomah, at the clerk's office in said county, the 6th day of May, 1865, at 9 o'clock a. m., to give evidence in a cause wherein A. M. and L. M. Starr are plaintiff and Benj. Stark is defendant, on the part of the plaintiff.

Witness my hand and seal of said court this 3d day of May, A. D. 1865.

[SEAL.] H. C. COULSON, *Clerk.*

On which is the following indorsement:

Starrs *vs.* Stark. Subp'a, William Warren.
Filed May 6th, 1865.

H. C. COULSON, *Clerk.*

STATE OF OREGON, *Multnomah county, ss:*

I hereby certify that I served the within writ on William Warren, by reading the same to him in person, in Multnomah county, on this 4th day of May, 1865.

Sheriff's fees, 2 10.

JACOB STITZEL, *Sheriff*,
By F. M. ARNOLD, *Deputy.*

230 In the circuit court of the State of Oregon for Multnomah county.

A. M. and L. M. STARR, pl'ffs, *vs.* BENJAMIN STARK, defendant. } Suit in equity.

To the defendant, and Wait & Kelly, Page & Grover, and Strong, his attorneys in the above-entitled suit: You are hereby notified that on the 5th day of May, 1865, at the clerk's office of the county of Multnomah aforesaid, before the clerk of said county or his authorized deputy, at the hour of 9 o'clock a. m. of said day, I shall proceed to take the depositions of A. Holbrook, S. Norris, A. B. Hallock, A. Stewart, F. De Witt, W. Warren, A. M. Starr, W. W. Chapman, J. L. Parrish, R. Wiley, T. Stephens, Thos. H. Smith, to be read as evidence in said suit. The taking of said depositions will continue from day to day from 9 o'clock a. m. until 5 o'clock p. m. until completed.

Dated at Portland this 1st day of May, 1865.

A. M. and L. M. STARR.
By W. W. CHAPMAN, *Att'y.*

Indorsed as follows: A. M. and L. M. Starr *vs.* Benj. Stark. Notice of taking depositions.

We acknowledge service of a copy of the within notice, this 1st day of May, 1865.

GROVER & PAGE,
of Att'ys for Benj. Stark.

Know all men by these presents that I, Francis De Witt, of
231 Portland, in the county of Washington, and Territory of Oregon, hotel keeper in, consideration of fifteen hundred dollars paid to me by Couch & Co., of same city, county, and Territory, merchants, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Couch & Co., their assigns forever, a certain house situated in said city and county aforesaid, on lot number four of block number forty-nine, on what is called and known as Benj. Stark's half of Portland. To have and to hold the aforesaid granted premises to the said Couch & Co., their heirs and assigns, to their use forever.

232 And I, the said Francis De Witt, for myself, my heirs, executors, and administrators, do covenant with the said Couch & Co., their heirs and assigns, that I am lawfully seized in fee of the above granted premises; that they are free from all incumbrances; that I have a good right to sell and convey the same to the said Couch & Co., their heirs and assigns as aforesaid, and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Couch & Co., their heirs and assigns forever, against the lawful claims and demands of all persons; provided, nevertheless, that if the said Francis De Witt, his heirs, executors, or assigns, shall pay unto the said Couch & Co., their executors, administrators, and assigns, the sum of fifteen hundred dollars in six months from the day of the date of these presents, with interest on said sum at the rate of eighteen per cent. per annum, payable quarterly, and pay all taxes levied or assessed on said premises, then this deed, as also a promissory note bearing even date with these presents signed by said Francis De Witt, whereby, for value received, he promises to pay the said Couch & Co. or order the said sum and interest at the
233 times aforesaid, shall both be absolutely void to all intents and purposes.

And provided also that until default of or in the payment of said sum, or of some part thereof, or interest therefor, or other default as herein provided, the mortgagee shall have no right to enter and take the possession of said premises.

In witness whereof, the said Francis De Witt and Otelia De Witt, wife of said Francis De Witt, who hereby relinquishes all her dower in the described premises, have hereto set our hands and seals this thirtieth day of March, in the year of our Lord eighteen hundred and fifty-one.

F. DE WITT. [SEAL.]
OTELIA DE WITT. [SEAL.]

Witness: J. P. COUCH.
WM. M. KING.

Personally appeared before me Francis De Witt and Otelia De Witt, his wife, to me personally known to be the persons whose names are subscribed to the above mortgage, and acknowledged the same to be

their act and deed for the purposes therein named, and wished the same so certified.

234 Given under my hand and seal this 4th day of April, A. D. 1851.

WM. M. KING, [SEAL.]
Notary Public.

I hereby certify that the within mortgage is recorded in records of bonds and deeds No. 1, pages 138 and 139, in my office, this 12th day of May, A. D. 1851.

WILLIAM GEIGER, JR.,
Clerk and Recorder, Washington County, O. T.

We hereby acknowledge payment and satisfaction of this mortgage recorded in records of bonds and deeds No. 1, pages 138 and 139, office of the recorder of Washington co., Oregon Terrtory, and therefrom discharge F. De Witt, and his heirs, administrators, and executors, forever.

Witness our hands and seals this day of , A. D. eighteen hundred and fifty-one.

Signed and sealed in the presence of—

——— ———.

Indorsed: Mortgage deed. Francis De Witt to Couch & Co.
235 March 1851. Exhibit B, filed May 5th, 1865, with deposition of F. De Witt. Recording, $1 35. H. C. Coulson, clerk.

Know all men by these presents that I, J. L. Morrison, of Portland, am held and firmly bound unto Francis De Witt, in the penal sum of ten thousand dollars. lawful money of the United States, for payment well and truly to be made, I bind myself, my heirs jointly and severally, firmly by these presents, sealed with my seal and dated this 30th day of July, A. D. 1850.

The condition of the above obligation is such that whereas the said Morrison hath this day agreed to sell to the said De Witt the following described town property, to wit, lot No. 4 in block No. 29, in the town of Portland, Oregon, upon the following terms: Twelve hundred dollars in hand, and nine hundred dollars in six months from this date, and the further sum of nine hundred dollars in twelve months from this date, which two last-mentioned items are evidenced by two several promissory notes of this date executed by the
236 said De Witt to the said Morrison or order. Now if the said De Witt shall discharge said notes according to the tenor thereof, and the said Morrison shall thereupon make to the said De Witt a good and sufficient quit-claim deed to the said lots, then this obligation to be void, else to remain in full force.

J. L. MORRISON. [SEAL.]

Signed, sealed, &c., in presence of—
S. M. HOLDERNESS.

Indorsed: J. L. Morrison. Bond to De Witt. "A." Filed May 5th, 1865, and attached to deposition of F. De Witt. H. C. Coulson, clerk.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR
vs.
BENJAMIN STARK.

STATE OF OREGON, *Multnomah county, ss:*

237 Deposition of F. De Witt, and A. B. Hallock, and W. Warren, and A. Holbrook, witnesses subpœnaed on part of plaintiffs, taken before me, H. C. Coulson, county clerk in and for said county, commencing at 9 o'clock a. m. May 5th, 1865, at clerk's office, in pursuance of notice hereto attached, W. W. Chapman and A. Holbrook, att'ys, appearing for pl'ffs, and W. W. Page and A. E. Wait, appearing for defendant, the depositions of said witnesses to be read in evidence on trial of said cause, when the same shall be tried.

Inter. 1st. State whether you are the F. De Witt who was examined on a former occasion in this case?

Ans. I am.

2. State whether Benj. Stark had any interest in a hotel kept by you in the years 1850 and 1851; and if so, what was it?

(Objected to.)

Ans. No interest for a while, except till I gave him a mortgage on the property.

I. 3. Did you make the original improvement on that lot? If not, who did? and if you purchased the lot or house, of whom did
238 you purchase it?

(Objected to.)

Ans. I bought it of J. L. Morrison, lot and house called the City Hotel.

Q. 4. What was the number of that lot?

Ans. Lot No. 4 and block No. 29.

Q. 5. What improvement was there upon that lot when you purchased it?

Ans. There was a two-story house with a flat roof, and a kitchen behind.

Q. 6. You state that you gave a mortgage to Benj. Stark or to somebody else; state to whom you gave the mortgage, and what for.

(Objected to.)

Ans. I gave the mortgage to John P. Couch, book-keeper for Couch & Co. He came down with Col. King, a notary public, to my house, and then I gave it to him.

Q. 7. Have you got that mortgage?

Ans. I have, sir.

Q. 8. For what was the mortgage to which you refer given?

(Objected to.)

Ans. On account of sickness in my family I could not do business any more.

Q. 9. Did you continue to keep a hotel after the date of that mortgage? and if so, how long?

239 Ans. I could not; but I think, if not mistaken, I closed up in March.

10 q. Did or not Benj. Stark board with you or eat at your house as a boarder after closing up as mentioned?

Ans. Not at my knowledge.

11 q. Prior to the execution of the mortgage referred to, did Benj. Stark have any interest in your house or lot, or control of it as a boarder?

Ans. He did not, sir.

12 q. Have you in your possession the original deed from Morrison to you for the lot mentioned, and will you allow it to be made a part of this your deposition?

(Objected to.)

Ans. I have the deed and will allow to be made a part of my deposition.

(The witness here presented the deed.)

13 q. Look upon the paper marked A, and state what it is; whose signatures are to it?

(Objected to.)

Ans. 'Tis a deed marked A, from Morrison to F. De Witt. Signatures, J. L. Morrison; S. M. Holderness as a witness.

14 q. Are you acquainted with the handwriting of S. M. Holderness?

(Objected to.)

239½ Ans. Not any more than I saw him put it down there.

15 q. Do you know where said Holderness is or resides?

(Objected to.)

Ans. I do not now.

16 q. Do you know whether he resides in Oregon?

Ans. I do not, sir.

17 q. Will you allow the mortgage referred to to be made a part of your deposition?

(Objected to.)

Ans. I will, sir. (Here the witness presented the paper marked Exhibit B and made a part of this deposition—admitted to be genuine, with the indorsements thereon, by counsel for defendant.)

18 q. You stated that you gave a mortgage to Couch & Co. What was the consideration of that mortgage?

(Objected to.)

Ans. For the buildings to from all the lumber.

19. q. State the circumstances under which you made sale, if you done so, of the property you purchased of Morrison; to whom you sold it, and about the time.

(Objected to.)

Ans. I sold it to Benj. Stark, 1853.

240 20 q. How much did he pay you for the property?

Ans. Believe 28 and 29 hundred dollars.

21 q. If you know, state when and to whom Benj. Stark sold the property.

(Objected to.)

Ans. He transferred it to a man by name of Bridges, an engineer here.

22 q. Was or not any part of the money or notes of Bridges to be paid to you? and if there was any reason, why did you sell to Stark, instead of selling direct to Bridges?

(Objected to.)

Ans. I did not get any notes from Bridges whatsomever.

23 q. Were you acquainted with Dr. C. H. Griffin in the years 1850 and 1851?

(Objected to.)

Ans. I was, sir.

24 q. What part of the Portland land claim did he reside upon, and how early in 1850 did he reside there?

(Objected to.)

Ans. When he came here in 1850, fall, he resided with me, and had his office there, and boarded and slept there.

25 q. Was that or not upon the Stark tract?

(Objected to.

Ans. It was, sir.

241 26 q. How long did he continue to reside upon that tract?

(Objected to.)

Ans. From that time what I know of, some time in 1852, which I know of.

27 q. How early did Dr. Griffin build a house, if he ever built, or upon what tract?

(Objected to.)

Ans. I could not exactly say; Hallock could tell better; he built the house.

28 q. Do you know where Benj. Stark usually slept in the fall of 1850, when in Portland?

Ans. I kinder think it was in Couch's store.

29 q. Was he or not at that time a member of the firm of *the firm of* Couch & Co., or so reputed?

b jected to.)

Ans. I suppose he must of been, as he called it his store; it was so reputed.

Cross-ex: Nothing.

F. DE WITT.

Amey Holbrook:

Int'r. 1. State your age, residence, and occupation.

Ans. Age, 45; Portland; attorney and counsellor.

2 q. Are you acquainted with the parties of this suit? and if so, how long?

Ans. I am; first met B. Stark in 1850, at San Francisco, and the pl'ffs in Portland in 1850 or 1851.

Ans. On account of sickness in my family I could not do business any more.

Q. 9. Did you continue to keep a hotel after the date of that mortgage? and if so, how long?

239 Ans. I could not; but I think, if not mistaken, I closed up in March.

10 q. Did or not Benj. Stark board with you or eat at your house as a boarder after closing up as mentioned?

Ans. Not at my knowledge.

11 q. Prior to the execution of the mortgage referred to, did Benj. Stark have any interest in your house or lot, or control of it as a boarder?

Ans. He did not, sir.

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(Objected to.)

Ans. I have the deed and will allow to be made a part of my deposition.

(The witness here presented the deed.)

13 q. Look upon the paper marked A, and state what it is; whose signatures are to it?

(Objected to.)

Ans. 'Tis a deed marked A, from Morrison to F. De Witt. Signatures, J. L. Morrison; S. M. Holderness as a witness.

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Ans. I will, sir. (Here the witness presented the paper marked Exhibit B and made a part of this deposition—admitted to be genuine, with the indorsements thereon, by counsel for defendant.)

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Ans. I sold it to Benj. Stark, 1853.

240 20 q. How much did he pay you for the property?

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Ans. I was, sir.

24 q. What part of the Portland land claim did he reside upon, and how early in 1850 did he reside there?

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Ans. I could not exactly say; Hallock could tell better; he built the house.

28 q. Do you know where Benj. Stark usually slept in the fall of 1850, when in Portland?

Ans. I kinder think it was in Couch's store.

29 q. Was he or not at that time a member of the firm of *the firm of* Couch & Co., or so reputed?

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Ans. I suppose he must of been, as he called it his store; it was so reputed.

Cross-ex: Nothing.

F. De WITT.

Amey Holbrook:

Int'r. 1. State your age, residence, and occupation.

Ans. Age, 45; Portland; attorney and counsellor.

2 q. Are you acquainted with the parties of this suit? and if so, how long?

Ans. I am; first met B. Stark in 1850, at San Francisco, and the pl'ffs in Portland in 1850 or 1851.

242 3 q. State, as far as you know, where the def't resided on the first day of Sept., 1849, and from that time to the first of Sept., 1853, and what you know about his residence upon what is called the Stark tract, in Portland.

Ans. I did not know him in 1849, nor until my arrival in San Francisco, where I was introduced to him. He was then doing business there in San Francisco, with the house of Stark & Co. I next saw him in Portland, about the first of June, 1850, upon the arrival of the steamer Carolina; think he returned to California on the Carolina, but came up again soon, during the summer, and staid here until Oct., 1850, of that year, when he started for the States, and was gone until the next summer. After his return, I think, he remained upon the land referred to till first of Sept., 1853.

4 q. Do you know any particular residence and settlement made by him upon the Stark tract? If so, when did that residence and settlement commence?

Ans. I cannot say when it commenced; I know that he had a house and garden there within the time mentioned, but I do
243 not recollect any until after his return from New York in 1851.

5 q. Do you know what house he resided in, making it his place of residence, upon the Stark tract? If so, state.

Ans. I think he boarded in Mr. De Witt's house while here in 1850; I do not know where he resided in 1851; I went to the States in the fall of 1851, and when I returned in 1852, I think he was residing in a building used by him as an office on the claim.

Cross-examination—by defendant:

1 q. Do you know when you first saw Ben. Stark in San Francisco whether he was there temporarily or not?

Ans. I do not, except that he told told me that he had a partner in Oregon, and had some land there, and advised me to stop in Portland, if I concluded to stay in the Territory. His partner had charge of the business in Oregon, and he in California. Whether the arrangement was permanent or not I do not know, and he did say, so far as I recollect.

2 q. When you speak of the def't going to the Atlantic States, do you know whether he went merely on business or not?

244 He went on business of the house of Sherman & Stark, & Couch & Co., so he told me.

3 q. Do you know when the office on Front street on the claim was built?

Am not positive, but I think in 1851.

4 q. Do you not know that Benj. Stark, at all times since you have known him, claimed the tract of land, including the lots in question, as his donation land claim, and as his residence and home?

(Objected to as irrelevant, calling for evidence prior to the first of Sept., 1849, and after Sept., 1853, the date of his certificate.)

Ans. When I first knew Mr. Stark, I think he claimed an undivided interest in the old Portland land claim, as it was called, a half

undivided interest by virtue of some arrngement of Pettigrow, or some other parties, and I do not know that before the passage of the land law, or until his return in 1851, that he ever claimed to reside upon this specific tract mentioned; but after that, I think, he did so claim; and, so far *so far* as I know, he did reside upon and cultivate as I have before stated.

5 q. State, if you know, the worth of the improvements that
245 Benj. Stark has put upon the land claim, including the lots in question?

(Objected to calling for evidence for improvements made after the date of his certificate.)

Ans. I thould think at least one hundred thousand dollars; am not positive about it. This is made without a particular investment.

6 q. Are you one of the attorneys for the plaintiffs in this suit?

Ans. Yes.

Ex.-in-chief resumed:

1 q. Are the improvements to which you have referred settlement improvements, or are they business improvements made upon lots as other lot holders in the town?

Ans. They are brick stores, warehouses, and dwellings occupied by tenants.

2 q. State, if you know, the houses of business with which Benj. Stark was connected in 1850, and what was the standing of their house about the time he went east in the fall of that year?

Ans. The houses were, in New York, Sherman & Stark; in San Francisco, Stark & Co., and in Portland, Couch & Co. About
246 the time he went east, it was reported that his New York house was embarrassed or in some difficulty, and subsquently we heard of their failure. In December, 1850, at the request of Capt. Couch, I went to San Francisco, tried to secure him on account of balances due him from the other houses, and obtained a lien on the real estate of Stark & Co. for his protection.

3 q. Was you acquainted with Geo. Sherman, of Portland, in the years of 1850 and 1851?

(Objected to.)

Ans. I was.

4 q. State, if you know, what his occupation and business was?

(Objected to.)

Ans. He was a clerk in the house of Couch & Co., and held a special power of attorney from Mr. Stark.

AMORY HOLBROOK.

Adjourned till one o'clock.

A. B. Hallock:

1 q. Are you acquainted with the Stark tract in the city of Portland, Oregon?

Ans. Yes, sir.

247 2 q. State whether or not that tract or any portion of it was occupied as a place of trade and commerce between the

first of Sept., 1849, and the first of Sept., 1853; and if so, how early and to what extent?

Ans. A portion of Front street was occupied by merchants doing general business when I came here in August, 1850, and has continued to be so ever since, increasing from year to year; when I came here in Aug., 1850, the first business house on the tract, Front street, was J. B. D. Butler; the next was occupied by Sheldon; the next was by Winter & Lattimer; next by Hobbs, Thos. J.; next, Robb. Thompson; next on that street was Richardson & Co.; subsequent to that was the house built and occupied by Mr. Stark on the opposite side of the street. These were all occupied prior to November of 1850 The next place of business was the office built for Stark on block 40; the next house was built by myself and partner in the winter of '51, and occupied by Henry W. Corbet; next house was built by Failing & Co.; these were built between November, 1850, and Jan, 1851; from that on increased 8 or ten more places of business up to the fall of 1853.

248 3 q. State when the house which you called the office was built, who concocted for its building, and who occupied it?

Ans. Geo. W. Sherman, as the attorney of Benj. Stark, contracted with Webber & Hallock in November, 1850, to erect the office and some other buildings on the same tract; don't remember the month when it was completed, but it was early in the winter, and was occupied by Geo. Sherman first; a short time afterwards Alexander Campbell occupied it with Sherman as a law office. They kept bach. there; this was in the year 1851, and it had several tenants afterwards. I don't know who. There was a daguerreotype office there a short time afterwards. Stark kept his own office there; when W. H. Farrar came to the country he occupied with him. Hamilton & Stark kept their office there. W. Cree kept a tailor shop there. These is, as near as I remember, the tenants of that office, and I have given them as near as I could remember.

4 q. Was it known by occupants of lots on the Stark tract at the time he proved up his donation claim that he was about to do

249 so? and if so, did Benj. Stark in any manner induce them to believe that their possessory right would be protected, or rights affirmed by him?

(Objected to.)

Ans. I don't remember to have heard Benj. Stark say what he would do in relation to it. I believe he did speak in a public meeting of the citizens relative to the rights of lot holders, but I was not in the meeting at the time he spoke.

5 q. Was the meeting held before or after the issue of his certificate or proof of donation?

(Objected to.)

Ans. I don't know; my impression is that it was about the same time.

6 q. State, if you know, why the occupants of lots upon that tract did not contest Stark's right to a donation to where he was proving up the same.

(Objected to.)

Ans. I don't know as they did contest, and I don't know that they didn't. I did hear that the old man Failing was going to claim the land, and, I think, A. P. Dennison. Whether they did or not I don't know.

7 q. Did Benj. Stark, at any time prior to the issue of his
250 patent, say or do anything tending to quiet the apprehensions on the part of occupants of that tract of danger by the success of Stark's claims?

(Objected to.)

Ans. I don't know that he did; he never said anything to me about it.

8 q. Did he co-act or state as above after the issue of his patent?

(Objected to. Question withdrawn.)

Were you or not acquainted with Dr. E. H. Griffin, of Portland? and if so, where did he reside? and did he claim any rights to any portion of the Portland claim?

(Objected to.)

Ans. I knew Dr. Griffin in the fall of 1850. I knew also late in the fall that Geo. Sherman, attorney of Stark, deeded that property to Dr. Griffin, (the Stark claim;) that fact was not generally known; very few knew it. It was not a great while before Dr. Griffin deeded it back again. Transfer was kept very quiet indeed, and was made on account of some of Stark's mercantile affairs. Dr. Griffin resided at the time on lot 29.

251 9 q. How long was it after Stark left Portland of the fall of 1850 till this was known to you?

(Objected to.)

Ans. It was known to me about the time it was done, within two months, perhaps, after Stark left here.

10 q. Did you hold any property in that tract not purchased of Benj. Stark at the time he proved up his donation?

Ans. I did not.

Cross-examination—by defendant:

1 q. What lot was A. M. or L. M. Starr upon from the time you first knew them up to the present within the Stark tract?

Ans. They were on the south half of lot 2, block 81, from Oct., 1850, up to, I think, 1857 or '8; then they removed to the south side of Stark street, corner of Front.

2 q. Had they, during the time referred by you, Oct., '50 or '8, been in the occupancy of any other part of the Stark tract than the south half of lot 2 in block 81?

They purchased subsequent to 1850, at what time I don't know, lots Nos. 1 and 4; subsequent to that time they purchased
252 lot 3, and they had sold the south half of lot 4, I think, in 1859. I have stated they occupied the south half of lot 2 in 1850, and their buildings stood on the south half of the lot. I think they bought lot 2 of Col. Chapman, and lot 4 of Jackson Powell. I think lot one of Chs. Hutchins, and lot 3 of J. W. Taylor; am not positive about these questions.

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(Objected to.)

Ans. I don't remember to have heard Benj. Stark say what he would do in relation to it. I believe he did speak in a public meeting of the citizens relative to the rights of lot holders, but I was not in the meeting at the time he spoke.

5 q. Was the meeting held before or after the issue of his certificate or proof of donation?

(Objected to.)

Ans. I don't know; my impression is that it was about the same time.

6 q. State, if you know, why the occupants of lots upon that tract did not contest Stark's right to a donation to where he was proving up the same.

(Objected to.)

Ans. I don't know as they did contest, and I don't know that they didn't. I did hear that the old man Failing was going to claim the land, and, I think, A. P. Dennison. Whether they did or not I don't know.

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250 patent, say or do anything tending to quiet the apprehensions on the part of occupants of that tract of danger by the success of Stark's claims?

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8 q. Did he co-act or state as above after the issue of his patent?

(Objected to. Question withdrawn.)

Were you or not acquainted with Dr. E. H. Griffin, of Portland? and if so, where did he reside? and did he claim any rights to any portion of the Portland claim?

(Objected to.)

Ans. I knew Dr. Griffin in the fall of 1850. I knew also late in the fall that Geo. Sherman, attorney of Stark, deeded that property to Dr. Griffin, (the Stark claim;) that fact was not generally known; very few knew it. It was not a great while before Dr. Griffin deeded it back again. Transfer was kept very quiet indeed, and was made on account of some of Stark's mercantile affairs. Dr. Griffin resided at the time on lot 29.

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(Objected to.)

Ans. It was known to me about the time it was done, within two months, perhaps, after Stark left here.

10 q. Did you hold any property in that tract not purchased of Benj. Stark at the time he proved up his donation?

Ans. I did not.

Cross-examination—by defendant:

1 q. What lot was A. M. or L. M. Starr upon from the time you first knew them up to the present within the Stark tract?

Ans. They were on the south half of lot 2, block 81, from Oct., 1850, up to, I think, 1857 or '8; then they removed to the south side of Stark street, corner of Front.

2 q. Had they, during the time referred by you, Oct., '50 or '8, been in the occupancy of any other part of the Stark tract than the south half of lot 2 in block 81?

They purchased subsequent to 1850, at what time I don't know, lots Nos. 1 and 4; subsequent to that time they purchased
252 lot 3, and they had sold the south half of lot 4, I think, in 1859. I have stated they occupied the south half of lot 2 in 1850, and their buildings stood on the south half of the lot. I think they bought lot 2 of Col. Chapman, and lot 4 of Jackson Powell. I think lot one of Chs. Hutchins, and lot 3 of J. W. Taylor; am not positive about these questions.

3 q. Do you not know that the plaintiffs, Starrs, while in the occupation of said lots, after the time of bringing this suit, claimed that the def't was obligated to make deeds them for said lots?

Ans. I don't know; I never heard him say anything about .

4 q. Do you not know that the pl'ffs of this suit, since the commencement of this suit, that Benj. Stark was bound unto them to make them (the plaintiffs') deeds?

(Objected to as irrelevant.)

Ans. Since the commencement of this suit was that Stark had promised to make Starr a deed several times; that was the first and about the only conversation.

5 q. Prior to the commencement of this suit has not Starr pretended to hold the lots in question, or any one of the same, as an occupant under the town-site law of 1844?

Ans. I don't remember whether he took a part in that matter or not with the other citizens.

253 Do you not know that the persons, as mentioned by you as having places of business on Front street, claimed title under Benj. Stark?

(Objected to.)

Ans. I believe the owners of all the property that I have mentioned have title deeds from Benj. Stark, except Starr, probably.

6 q. When you speak of J. Failing and A. P. Dennison being about to claim the Stark tract, do you not know that the claims were for themselves as individuals?

Ans. I so understood it at the time—that they were claimants under the donation law.

7 q. When you speak of the def'ts having purchased the other property than lot 2 aforesaid in block 81, state when, if ever, they were in the actual occupancy of such other lots, and how they occupied the same.

Ans. Lot 4, the first that I know of their purchasing, laid vacant up to 1859 or '60, when, I believe, there were two buildings built upon it, one by Starr and the other by Shirtick. Lot one was occupied first in 1851 by Norris & Co., who had or erected a warehouse upon it, which was upon it when Starr purchased it. A year or two after they built a foundation on the rear side of lots one and

254 two. Lot 3 had two buildings upon it when they purchased it, occupied. This spring they have built two other buildings upon it or part of lots one and two.

8 q. Do you not know that Chs. Huchins was in the actual occupancy of lot one until some time in the year 1861, and that J. W. Clever and Peters were in actual occupancy of lot 3 until 1862?

Ans. I know that Huchins occupied the lot 1 in 1860; also that Clever occupied lot 3, or claimed it, as late as 1862. I know that Starr owned lot 4 as early as 1858 and 1859.

Adjourned till 9 o'clock to-morrow, the 6th.

A. B. HALLOCK.

William Warren:

Int. 1. State your age, residence, and occupation.

Ans. Age is 67; residence is about six miles from Portland, down the river; occupation, carpenter.

2 q. Are you acquainted with the parties to this suit? and if so, how long have you been acquainted with them?

255 Ans. I am acquainted with the parties to this suit. I have been acquainted with Benj. Stark since November of 1847. Mr. Starr, have been acquainted with him since 1851.

3 q. Are you acquainted with the Portland land claim, and particularly with that part known as the Stark tract?

Ans. I am.

4 q. How long have you been in Oregon, and where have you resided up to Sept., 1853?

Ans. I arrived in Oregon in 1847, and resided, in the early part, on what is called the Stark tract.

5 q. State more particularly the length of time that you resided upon the Stark tract.

Ans. I resided from Jan'y, 1848, till 1853.

6 q. Was any portion of that tract laid out as a town at the commencement of your residence thereon? and to what extent was it occupied as a place of trade and commerce, if it was so occupied at all during your residence thereon?

There was a portion of it laid out as a town, one or two streets back, down as far as Cook's, where the street takes a bend. I built the first house that was built on that tract in the spring of 1848.

7 q. How long did you reside in the house you first built?

256 Ans. I resided in the house till the spring of 1851, I think; I lived there longer, but not permanent all the time.

8 q. Did you or not build a house upon that tract other than the one you have mentioned? and if so, to what purpose was it, and *and* who owned the lot that it was built on?

Ans. I built a house in 1850 for a hotel. I built a house with the assistance of Capt. Hall.

9 q. What was that house called?

Ans. The Warren House.

Q. Did the def't, Benj. Stark, ever board with you or any tenant of yours in that house from 1849, first of Sept., to the first of Sept., 1853? and if so, what portion of the time?

Ans. He never ate a meal of victuals to my knowledge.

10 q. Who first opened the Warren House as a hotel?

Ans. Capt. Coburn and Smith. I think his name was Smith; I'll not be positive.

11 q. How long did Coburn and Smith keep the house?

Ans. They kept it between two and three months.

12 q. State about the seasons of the year, as near as you can, they commenced to keep that house.

257 I think they commenced in January or February, or thereabouts; am not positive, in the spring of 1851.

13 q. Who next kept the house, and how long?

Ans. I kept the house myself for one month.

14 q. And then who kept it during the year of 1851?

Ans. I delivered it up to Capt. O. S. Hall, and he kept it all that year.

15 q. From the time of your building that house where did you reside until Sept., 1853?

Ans. I resided part of the time in that house, and part of the time in a house, which I built on the next block.

16 q. State what portion of the time you resided in the Warren House.

Ans. I could not state exactly; I might of been in it half of the time, and I might not.

17 q. State, as near as you can, the time you ceased to reside in that house.

Ans. I could not with any exactness; might of been there till 1852.

18 q. If Benj. Stark, in the year 1850 or 1851, had resided at any time in that house would you, or would you not have known it?

(Objected to.)

Ans. I think I should; couldn't helped of knowing it, if he had.

19 q. Had Benj. Stark, to your knowledge, any interest in
258 the Warren House property during the time which you say *you say* you resided therein?

(Objected to.)

Ans. No interest to my knowledge.

20 q. State, as far as you can, the number of business houses upon that tract prior to 1853, and by whom kept.

(Objected to.)

Ans. I suppose there might of been twenty (20) business houses upon it; am not positive.

(Latter clause of the question waived.)

21 q. State what business houses were upon that tract, if any, in 1849, '50 and '51.

(Objected to.)

Ans. I could not say with any certainty. I think Mr. Corbet and Mr. Failing, and a number of others, but I could not recollect their names.

22 q. From the first of Sept., 1849, till first of Sept., 1853, do you know where Benj. Stark had a place of residence, and resided thereon? if so, state as near as you can.

Ans. I don't know positively as he had a residence of his own during that time.

23 q. After the first of Sept., 1849, did you see him on or
259 about the Stark tract? and if so, what was he doing in that year?

Ans. Not in that year; after that year, I think.

24 q. Could or not Benj. Stark have resided upon the Stark tract from the first of Sept., 1849, in that year, without your knowing it?

Ans. I think I should of known it, sir.

Cross-examination—by defendant:

1 q. Do you not know that the persons doing business on the Stark tract claimed to of derived their titles from Benj. Stark—persons referred to by you in your direct examination?

Ans. I think Mr. Stark had an agent here, Sherman; he sold some few lots, and I think he gave some kind of a title.

2 q. Was the lot referred to by you as the property known as the Warren House property, obtained from Benj. Stark, or his grantees?

Ans. The lot which the Warren House stood on was obtained from Lownsdale & Coffin. There was two lots belonging to the Warren House. Capt. Hall sold one to my step-son, and my step-son, he got a deed from Mr. Stark for it.

260 3 q. Do you not know that Benj. Stark, during the whole time that you knew him, except when temporarily absent on business, occupied and claimed what you have referred to as the Stark tract?

Ans. I think not; he done business, what I knew him to do, with Capt. Couch on the Couch claim.

4 q. When was it that he did business with Capt. Couch on the Couch claim?

Ans. I can't be positive whether it was 1850 or '51.

5 q. Do you not know that Stark claimed this tract of land as far back as you knew him?

(Objected to as irrelevant.)

Ans. The first knowledge I had of Mr. Stark was 4th Nov., 1847, and he left here the 8th day of the same month. I had no knowledge of his claiming it at that time. He was supercargo of the bark Toolong, which sailed from this port.

6 q. When did you first know that Stark claimed this tract of land?

Ans. I didn't know personally from himself until 1849, but I understood that he claimed a portion of it.

7 q. Do you not know that Mr. Stark boarded at the Warren House?

Ans. Not to my knowledge.

261 8 q. Who first laid off the two or three streets referred to you as a town, or into town lots?

Ans. I don't know as it was laid off when I came here. I understood it was laid off by Mr. Lovejoy, who had been a claimant of the town lot with Mr. Pettigrow.

9 q. What time was it in 1850, that you first knew Mr. Stark to occupy the Stark tract? and how long thereafter did you know him to reside thereon?

Ans. I couldn't say; I think not until he was married. I can't recollect at what time he was married.

10 q. Do you not know that Benj. Stark resided on the claim several years previous to his marriage, and had Mrs. Maj. Tucker to keep house for him?

(Objected to as leading.)

Ans. I think it was spoke of that Capt. Molthrop had Mrs. Tucker to keep house for him on the tract, and that Mr. Stark might of stopped with him a little while. I rather think he did.

11 q. State whether or not the people in the occupany of the part laid off into a town, or the plaintiffs, ever claimed to hold the same or they occupied as a town site, under the law of 1844, commonly called the town-site law?

262 Ans. No; I don't know as I ever heard any one claim, under that law.

12 q. Do you remember whether or not Benj. Stark was elected to the legislature of the Territory of Oregon, from Washington county, in which the city of Portland was situated, in the spring of 1852?

(Objected to as immaterial.)

Ans. I know he was elected to the legislature. It was rumored that many people objected to voting for him because he carried on business in California, or so reported.

13 q. State where, if you know, Benj. Stark resided at that time?

Ans. I could not state that I have any recollection.

14 q. Is not your memory somewhat faint with regard to transactions so many years since?

Ans. My memory, I suppose, is not so good as when I was younger.

Ex.-chief resumed:

1 q. About what time did Capt. O. S. Hall sell to your step-son, as you have before mentioned?

(Objected to as immaterial, and not the best evidence.)

Ans. I think some time in 1851, the lot back of the Warren

263 House.

2 q. What time did you first see Benj. Stark at or about Portland after he left on the Toolong, as you stated in your cross-examination?

Ans. I saw him in the summer of 1849, at what time I cannot tell. He was here a day or two; he went away somewhere, and I don't know where, and I didn't see him until 1850.

3 q. Was you acquainted with Dr. E. H. Griffin? and if so, when and where did he reside?

(Objected to.)

Ans. I was acquainted with him. He resided on the Stark tract in 1850 and 1851.

WILLIAM WARREN.

Adjourned until 2 o'clock, for the purpose of getting Mr. Hallock present.

264 STATE OF OREGON, *Multnomah county, ss:*

I, H. C. Coulson, county clerk in and for said county and State, do hereby certify that in pursuance of the notice hereto attached, the foregoing depositions of F. De Witt, A. B. Hallock, Amory Holbrook, and William Warren, witnesses subpœnaed before to testify on behalf of A. M. and L. M. Starr, plaintiffs, *vs.* Benjamin Stark, defendant, were taken before me, clerk as aforesaid, at county clerk's office of said county, commencing at 9 o'clock a. m. May 5, 1865, and continued from time to time, as per adjournments stated in foregoing de-

positions, W. W. Chapman and A. Holbrook, att'ys, appearing for plaintiffs, and W. W. Page and A. E. Wait appearing for defendant. That before proceeding to the taking of the testimony of said witnesses, they and each of them were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and the testimony of said witnesses, reduced to writing by Richard Ranlet, under my direction, and the same carefully read over to each respective witness, and by him signed.

In testimony whereof, I have hereunto set my hand and
265 official seal this 6th day of May, A. D. 1865.

[L. S.] H. C. COULSON,
Co. Clerk, Multnomah County, Oregon.

[U. S. rev. stamp, 5 ct.]

On the foregoing is the following indorsement:

In circuit court. A. M. and L. M. Starr *vs.* Benjamin Stark. Depositions of De Witt, Holbrook, Hallock, and W. Warren. $17 fee.

No. 36. Filed in the supreme court, Sept. 2, 1865.
R. WILLIAMS, *Clerk.*

266 *Stark to Sherman.—From page* 37, *book A.—Copy.*

Know all men by these presents that I, Benjamin Stark, of the town of San Francisco, merchant, have made, constituted, and appointed, and by these presents do make, constitute, and appoint George Sherman of Portland, in Oregon, my true and lawful attorney, for me, and in my name, place, and stead, to present, prove, substantiate, and by all lawful means to prosecute and establish all and sundry claims to rights and interests in land, tenements, and hereditaments to me in anywise appertaining, or which are now or may hereafter become vested in me in the Territory of Oregon aforesaid, whether as against the government of said Territory or of the United States, or as against individuals, corporations, or others, and likewise to exercise the general control and supervision over all lands, tenements, and hereditaments belonging to me and situate in said Territory, to prevent, forbid, and hinder by all lawful means whatsoever the commission of any trespass or waste upon the same, or any part thereof, and at my cost and charge to sue for, collect, recover, and receive, and compound for any damages which may occur by means of the commission of any trespass or waste upon the said lands, tene-
ments, and hereditaments, or any part thereof, by any person
267 or persons whomsoever; to enter into and take possession of lands, tenements, and hereditaments, and real estate whatever in said Territory to or in which I am or may be in any way entitled or interested; and to grant, bargain, and sell the same, or any part or parcel thereof, for such sum or price and on such terms as to him shall seem meet; and for me, and in my name, to make, execute, acknowledge, and deliver good and sufficient deeds and conveyances

for the same, either with or without covenants and warranty, and until the sale thereof, to let and devise the said real estate for the best rent that can be procured for the same, and to ask, demand, distrain for, collect, recover, and receive all sums of money which shall become due and owing to me by means of such bargain and sale, or lease and demise. Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal
268 the seventeenth day of January, in the year one thousand eight hundred and fifty.

BENJ. STARK. [L. S.]

Sealed and delivered in presence of—
WASHINGTON FARNS.
WM. K. KILBORN.

TERRITORY OF UPPER CALIFORNIA,
District of San Francisco, ss:

Be it remembered that on this seventh day of January, in the year one thousand eight hundred and fifty, at San Francisco, and within the district and Territory aforesaid, personally appeared before me, the undersigned notary public, duly commissioned and qualified, Benjamin Stark, who is known to me to be the person whose name is subscribed to the above power of attorney, as having executed and acknowledged the same to be his true act and deed for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my seal of office the day and year above written.

[L. S.] C. V. GILLESPIE,
Notary Public, Dist. San Francisco, U. Cal.

Recorded this 23d day of November, A. D. 1850.
WILLIAM GEIGER, JR., *Recorder.*

269 *Stark to Griffin.—Copy.*

Know all men by the presents that I, Benjamin Stark, of San Francisco, merchant, in consideration of the sum of twenty seven thousand dollars to me paid by E. H. Griffin, of Portland, Washington county, O. T., dentist, the receipt whereof is hereby acknowledged, do hereby convey, remise, release, and forever quit-claim unto the said E. H. Griffin all my , title, and interest in lands, tenements, and hereditaments to me in anywise appertaining, or which are now or may hereafter become vested in me in the Territory of Oregon, with all the rights, easements, privileges, and appurtenances thereunto belonging. To have and to hold the above released property

and rights to the said E. H. Griffin to his use and behoof; and I, Benjamin Stark, do for myself, my heirs, executors, and administrators, covenant with the said E. H. Griffin, that the premises are free from all incumbrances made or suffered by me; and that I will, and my heirs, executors, and administstrators shall, warrant and defend the same to the said E. H. Griffin, his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under me.

In witness whereof, I, the said Stark, have hereunto set my
270 hand and seal this sixteenth day of November, in the year of our Lord one thousand eight hundred and fifty.

BENJ. STARK, [L. S.]
By GEORGE SHERMAN, *his Att'y.*

Witnesses: H. CAMPRELL.
W. M. KING.

TERRITORY OF OREGON, *Washington county, ss:*

Be it remembered that on this sixteenth day of November, in the year one thousand eight hundred and fifty, at Portland, and within the county and Territory aforesaid, personally appeared before me, the undersigned notary public, duly commissioned and qualified, George Sherman, who known to me to be the person whose name is subscribed to the within deed of conveyance as having executed and acknowledged the same to be his true act and deed.

In testimony whereof, I have hereunto set my hand and affixed my seal of office the day and year above written.

[L. S.] WM. M. KING.

Recorded this 23d day of November, A. D. 1850.
WILLIAM GEIGER, JR., *Recorder.*

271 *Stark to Griffin.—Copy.*

Know all men by these presents that I, Benjamin Stark, of San Francisco, California, merchant, in consideration of the sum of seven hundred dollars to me paid by Edward H. Griffin, of Portland, Washington county, O. T., dentist, the receipt whereof is hereby acknowledged, do hereby convey, remise, and release and forever quit-claim unto the said Edward H. Griffin two certain lots of land, situate in the town of Portland aforesaid, 50 by 100 feet each, as laid down in town plot and known as lots number one and eight in block twenty-nine, being the northeast and northwest corner of said block, with all the rights, easements, privileges, and appurtenances thereunto belonging. To have and to hold the above released premises to the said Edward H. Griffin, his heirs and assigns, to his and their use and behoof forever. And I, the said Benjamin Stark, for myself, my heirs, executors, and administrators, do covenant with the said Edward H. Griffin, his heirs and assigns that the premises are free from all incumbrances made or suffered by me, and that I will, and my

heirs, executors, and administrators shall, warrant and defend the same to the said Edward H. Griffin, his heirs and assigns for-
272 ever, against the lawful claims and demands of all persons claiming by, through, or under me.

In witness whereof, I, the said Stark, have hereunto set my hand and seal this 13th day of November, in the year of our Lord one thousand eight hundred and fifty.

George Sherman, his attorney, duly authorized by letter of att'y herewith.

BENJ. STARK, [L. S.]
By GEORGE SHERMAN.

Witnesses: L. P. SIMPSON.
WM. SETON OGDEN.

TERRITORY OF OREGON, *Washington county, ss:*

Be it remembered that on the sixteenth day of November, in the year one thousand eight hundred and fifty, at Portland, and within the county and Territory aforesaid, personally appeared before me, the undersigned notary public, duly commissioned and qualified, George Sherman, who is known to me to be person whose name is subscribed to the above or within deed of conveyance, as having executed and acknowledged the same to be his true act and deed for purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and seal, affixed my seal of office the day and year above written.
273 [L. S.] WM. M. KING.

Recorded in this office November 23d, A. D. 1850.
WILLIAM GEIGER, JR., *Recorder.*

Griffin to Stark.—From page 102, *book A.—Copy.*

Know all men by these presents that I, Edward H. Griffin, of the town of Portland, county of Washington, Oregon Territory, in consideration of the sum of twenty-seven thousand dollars to me paid by Benjamin Stark, of San Francisco, California, merchant, the receipt whereof is hereby acknowledged, do hereby convey, remise, release, and forever quit-claim unto the said Benjamin Stark all my title and interest in lands, tenements, and hereditaments to me in anywise appertaining, or which are now or may hereafter become vested in me solely, according to quit-claim deed to me executed by the said Stark on the sixteenth day of November last, in the Territory of Oregon; with all the rights, easements, privileges, and appurtenances thereunto belonging. To have and to hold the above released property and rights to the said Benj'n Stark, his heirs and assigns, to his
274 and their use and behoof forever. And I, the said Edw. H. Griffin, do for myself, my heirs, executors, and administrators, covenant with the said Benj. Stark that the premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors, and administrators shall, warrant and defend the

same to the said Benj. Stark, his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under me.

In witness whereof, I, the said Griffin, have hereunto set my hand and seal this tenth day of March, in the year of our Lord one thousand eight hundred and fifty-one.

E. H. GRIFFIN. [L. S.]

Signed, sealed, and delivered in presence of—
JAS. W. DAVIS.
LEWIS DAY.

Personally appeared before me E. H. Griffin, to me personally known to be the person whose name is affixed to the within deed, and acknowledged the same to be his act and deed for the purposes therein mentioned, and wished the same so certified.

Given under my hand and seal this 17th day of March, A. D. 1851.

[L. S.] WM. M. KING,
Notary Public.

Recorded this 8th day of April, A. D. 1851.
WM. GEIGER, JR., *Recorder*,
By R. WILCOX, *Deputy*.

275 *Stark to Hallock and Webber.—P.* 159, *book A.*

Know all men by these presents that I, Benjamin Stark, of San Francisco, California, merchant, in consideration of the sum of nine hundred dollars to me paid by Zina H. Webber and Absalom B. Hallock, jointly, both of Portland, Washington county, Oregon Territory, builders, the receipt whereof is hereby acknowledged, do hereby convey, remise, release, and forever quit-claim unto the said Webber and Hallock jointly, a certain lot of land situate in the town of Portland aforesaid, fifty by one hundred feet as laid down in town plot, and known as lot No. one in block No. forty, being the southwest corner of Front and Oak streets, with all the rights, easements, privileges, and appurtenances thereunto belonging. To have and to hold the above released premises to the said Webber and Hallock jointly, their heirs and assigns, to their use and behoof forever. And I, the said Stark, for myself, my heirs, executors, and administrators, do covenant with the said Webber and Hallock jointly, their heirs and assigns, that the premises are free from all incumbrances made or suffered by me, the United States government excepted, and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Webber and Hallock
276 jointly, their heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under me.

In witness whereof, the said Stark, grantor, hath hereunto set

his hand and seal this twenty-second day of April, in the year of our Lord one thousand eight hundred and fifty-one, by George Sherman, his duly authorized attorney, by letter of attorney on record.

BENJ. STARK, [L.S.]
By his att'y GEORGE SHERMAN.

Signed, sealed, and delivered in presence of—
SAM'L E. MAY.
LEWIS DAY.

TERRITORY OF OREGON, *Washington county, ss:*

Be it remembered that on this 1st of May, A. D. 1851, before me, one of the justices of the peace within and for the Territory and county aforesaid, personally appeared Benj. Stark, by his attorney, George Sherman, and acknowledged that he signed the foregoing instrument of writing as his act and deed for the purposes therein mentioned.

Given under my hand and seal, at Portland, the day and year above written.

277 [SEAL.] ANTHONY L. DAVIS,
Justice Peace.

Recorded June 27th, A. D. 1851.
WILLIAM GEIGER, JR., *Clerk and Recorder.*

Stark to Pillow and Drew.—P. 171, *b. A.*

Know all men by these presents that I, Benjamin Stark, of San Francisco, merchant, in consideration of the sum of eight hundred dollars to me paid by Messrs. Pillow and Drew, of Portland, Washington county, Oregon Territory, goldsmiths, the receipt whereof is hereby acknowledged, do hereby convey, remise, release, and forever quit-claim unto the said Messrs. Pillow and Drew, all my title and interest in a certain lot of land situate in the town of Portland aforesaid, 50 by 100 feet as laid down in town plot, and known as lot No. 2 in block 40, bounded north by lot No. 1 in the same block, east on Front street, south by lot No. 3 in same block, and west by lot No. 7 in block aforesaid, with all the rights, easements, privileges, and appurtenances thereto belonging. To have and to hold the above released premises to the said Messrs. Pillow & Drew, their
278 heirs and assigns, to their use and behoof forever. And I, the said Stark, for myself, my heirs, executors, and administrators, do covenant with the Messrs. Pillow and Drew, their heirs and assigns, that the premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Messrs. Pillow and Drew, their heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under me.

In witness whereof, I, the said Stark, grantor, have hereto set my

hand and seal this twentieth day of September, in the year of our Lord one thousand eight hundred and fifty, by George Sherman, his duly authorized attorney.

BENJ. STARK, [L. S.]
Per GEORGE SHERMAN.

Witnesses: Signed, sealed, and delivered in presence of—
JOHN HARLOW.
CHARLES D. CAMP.

TERRITORY OF OREGON, *Washington county, ss:*

Be it remembered that on this twenty-eighth day of June, in the year one thousand eight hundred and fifty-one, at Portland,
279 and within the county and Territory aforesaid, personally appeared before me, the undersigned Anthony L. Davis, duly commissioned and qualified, George Sherman, who is known to me to be the person whose name is subscribed to the within deed of conveyance as having executed and acknowledged the same to be his true act and deed for the purposes mentioned.

In testimony whereof, I have hereunto set my hand and seal the day and year above written.

[L. S.] ANTHONY L. DAVIS,
Justice of the Peace.

Recorded on the 7th day of July, A. D. 1851.
WILLIAM GEIGER, JR.,
Clerk and Recorder,
By R. WILCOX, *Deputy.*

Stark to Brydges.—Page 655.

Know all men by these presents that I, Benjamin Stark, of Portland, in the county of Washington and Territory of Oregon, for the consideration of twenty-six hundred and fifty dollars to me paid, the receipt whereof is hereby acknowledged, by M. C. Brydges aforesaid do hereby remise, release, and forever quit-claim unto
281 the said Brydges, his heirs and assigns forever, one certain lot of land situate in the city of Portland aforesaid, fifty by one hundred feet, described as follows, viz: commencing at the corner of First and Oak streets; running thence northly on the line of First street, fifty feet; thence westerly one hundred feet, parallel with Oak street; thence southerly fifty feet, parallel with First street; thence one hundred feet on the line of Oak street, to the place of beginning; together with all the rights, easements, privileges, tenements, hereditaments, and appurtenances thereunto belonging, being the property lately owned by Francis De Witt. To have and to hold to the said Brydges, his heirs and assigns, to his and their use and behoof forever. And I, the said Stark, for myself, my heirs, administrators, executors, and assigns, do covenant with the said Brydges, his heirs and assigns, that the said premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, administrators, and ex-

ecutors shall, warrant and defend the same to the said Brydges, his heirs and assigns forever, against the lawful claims and de-
282 mands of all persons claiming by, through, or under me.

In witness whereof, I, the said Stark, have hereunto set my hand and seal this eighth day of April, in the year of our Lord one thousand eight hundred and fifty-three.

BENJ. STARK. [L. S.]

Signed, sealed, and delivered in presence of—
F. DE WITT.
ALEX'R KENNEDY.

TERRITORY OF OREGON, *County of Washington, ss:*

Personally appeared before me, this 9th day of April, 1853, Benjamin Stark, to me personally known as the signer and sealer of the foregoing instrument of writing, and acknowledged that he signed and sealed the same as his own free act for the purposes therein set forth.

ANTHONY L. DAVIS,
Justice of the Peace.

Received for record September 20th, 1854.
W. S. CALDWELL, *Auditor and Recorder.*

283 THE STATE OF OREGON, *Multnomah county, ss:*

I, H. C. Coulson, county clerk in and for said county and State, do hereby certify that I have compared the several instruments of writing hereto attached, with the record of each of the same, to wit:

Stark to Sherman, power of att'y, recorded page 12; Stark to Griffin, deed, recorded page 14; Stark to Griffin, deed, recorded page 15; E. Griffin to Stark, deed, recorded page 30; Stark to Hallock and Webber, deed, recorded page 51; Stark to Pillow and Drew, deed, recorded page 57; Stark to Brydges, deed, recorded page 655; and that the same are correct copies of each, and of the whole thereof, as appears on the transcript of record of deeds originally recorded in Washington county, Oregon, and duly certified, as appears on said record at my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 6th day of May, A. D. 1865.

[L. S.] H. C. COULSON,
County Clerk, Multnomah County, Oregon.

[U. S. rev. stamp, 5 ct.]

284 On the foregoing is the following indorsement:

In circuit court. A. M. and L. M. Starr *vs.* Benj. Stark. Copies of power of att'y and deeds, filed May 6, 1865, by plaintiffs. H. C. Coulson, clerk.

No. 36. Filed in the supreme court, Sept. 2, 1865.
R. WILLIAMS, *Clerk.*

285 *Notice to take depositions.*

In the circuit court of the State of Oregon for the county of Multnomah, in chancery.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, def't.

To. A. M. and L. M. Starr, pl'ffs, and Amory Holbrook and W. W. Chapman, att'ys:

You are hereby notified that the depositions of John H. Couch, Wm. S. Ogden, Wm. E. Molthrop, Peter G. Stewart, James B. Stephens, James D. Holman, and William H. Bernett will be taken before Samuel A. Moreland, esq., a notary public, at his office in the city of Portland, in said county, commencing on the fifteenth inst., at ten o'clock a. m., and continuing from day to day, between the hours of 9 o'clock a. m. and the hour of 4 o'clock p. m., until completed, on the part of the defendant, to be read in evidence upon the trial of the above-entitled suit, at which time and place you can attend, and cross-examine said witnesses if you see proper.

Dated at Portland, March 11th, 1865.

286 GROVER & PAGE, and STRONG, WAIT & KELLEY.

On the foregoing is the following indorsement:

Circuit court. A. M. and L. M. Starr, pl'ffs, *vs.* Benjamin Stark, def't. Notice to take depositions.

STATE OF OREGON, *Multnomah county:*

I hereby certify that I served a copy of the within notice to take depositions on Amory Holbrook, esq., in the city of Portland, in Multnomah county, on the 13th day of March, A. D. 1865.

Portland, March 13th, 1865.

JACOB STITZEL, *Sheriff*,
By F. M. ARNOLD, *Dep't.*

Fees, 1 20.

In the circuit court of the State of Oregon for the county of Multnomah, in chancery.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, def't.

287 To A. M. and L. M. Starr, pl'ffs, and W. W. Chapman and Amory Holbrook, esqs., their att'ys:

You are hereby notified that the depositions of John H. Couch, Wm. S. Ogden, Wm. E. Molthrop, Peter G. Stewart, James B. Stephens, James D. Holman, and William H. Burnett will be taken before Samuel A. Moreland, esq., a notary public, at his office in the city of Portland, in said county, commencing on the fifteenth inst.

at 10 o'clock a. m., and continuing from day to day, between the hours of 9 o'clock a. m. and 4 o'clock p. m., until completed, on the part of the defendant, to be read in evidence upon the trial of the above-entitled suit, at which time and place you can attend and cross-examine said witnesses if you see proper.

GROVER & PAGE, and STRONG,
WAIT & KELLEY, *Def'ts Att'ys*.

On the foregoing is the following indorsement:

288 Circuit court. Notice to take depositions. A. M. and L. M. Starr, pl'ffs, *vs.* Benjamin Stark, def't.

STATE OF OREGON, *Multnomah county, ss:*

I hereby certify that I served copies of the within notice to take depositions on Lansing Stout and W. W. Chapman, in the city of Portland, in Multnomah county, on the 9th day of March, A. D. 1865, they being attorneys for A. M. and L. M. Starr.

Portland, March 9, 1865.

JACOB STITZEL, *Sh'ff*.

Sheriff fees, $1 40.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant.

Deposition of W. H. Bennett, a witness on part of the defendant, taken before S. A. Moreland, notary public, March 15th, 1865, to be read in evidence on the trial of the above-entitled cause,
289 Hon. A. Holbrook and Col. W. W. Chapman appearing for plaintiffs, and Hon. A. E. Wait for defendant.

Examination-in-chief—by Judge Wait for def't.

Int. 1. Are you acquainted with the parties to this suit?

Ans. I am.

Int. 2. How long have you been acquainted with them?

Ans. I have known the Messrs. Starr since 1853, and Mr. Stark since 1845.

Int. 3. Where has been the residence of the defendant since you have known him, up to 1860, as far as you know?

(To so much of the question as calls for answer as to the residence of the defendant prior to the first day of September, 1849, and September, 1853, the plaintiff objects, because the same is irrelevant.)

Ans. I have known him since 1845; his residence was Portland, so considered.

Int. 4. State where in Portland he boarded or lived, if you know.

Ans. At the Pettigrove House. I became acquainted with him in the latter part of 1845, and I think it must have been in
290 the early part of 1846 when Mr. Pettigrove moved down here. Prior to the time Mr. Pettigrove moved here defendant

boarded on board a ship. After Mr. Pettigrove came here defendant boarded with him. The next place I found Mr. Stark boarding was at the Warren House, on the Stark tract. This was in 1850, I think.

Int. 5. State about what time you first knew him to be keeping house in Portland.

Ans. I think, perhaps, the latter part of 1851 or in 1852.

Int. 6. In what part of Portland was he then keeping house?

Ans. On the Stark tract.

Int. 7. Do you know anything about his cultivating the ground?

Ans. The place that is called the "Stark block" I ploughed for him in the fall of 1850.

Int. 8. What do you know of his cultivating the half block on which he lived with his family?

Ans. I know it was under cultivation; I saw fruit trees and vegetables growing there; I saw him cultivating it.

Int. 9. How many years do you know that he cultivated the ground where he lived with his family on the Stark tract?

(Objected to because the question does not confine the answer to the time between the 10th of September, 1849, and the 10th
291 of September, 1853.)

Ans. I can safely say from three to four years.

Int. 10. From what time to what time has the defendant Stark resided in Portland?

(Objected to because it does not confine the answer to the time of his alleged settlement and cultivation for four years.)

Ans. From December, 1845, till 1862.

Int. 11. Did or did not the defendant, Stark, reside upon his land claim, known as the Stark tract, in the city of Portland from the first day of September, 1849, to the first day of September, 1853.

(Objected to as leading.)

Ans. I think he did.

(Objected to because what the witness thinks is not evidence.)

Cross-examination—by Col. W. W. Chapman, for plaintiff:

Int. 1st. State whether or not you was one of the defendant's witnesses in proving up his donation claim.

Ans. I was.

Int. 2d. State whether you have had shown to you at this examination your affidavit upon that subject; and if so, by whom?

(Objected to as immaterial.)

292 Ans. I was shown what purports to be a copy of my affidavit by Mr. Page, before this examination this morning.

Int. 3d. What time in 1850 did you know Benjamin Stark to be boarding at the Warren House?

Ans. In the latter part of the year.

Int. 4. Do you know what constitutes a residence?

Ans. I think I do.

Int. 5. Do you know how long the defendant boarded at the Warern House at the time mentioned? If so, state.

Ans. I do not know.

Int. 6. How long did you see him there?

Ans. I don't know that I can say how long.

Int. 7. Was it a month?

Ans. I should think it was.

Int. 8. Who kept the house at that time?

Ans. I think it was O. S. Hall.

Int. 9. Do you know who was the owner of that house at the time the defendant boarded there?

Ans. I do not.

Int. 10. Did the defendant board there as much as two months?

Ans. I don't know.

Int. 11. You state the defendant resided on board the ship prior to the time of Pettigrove's removal to Portland. Whose ship was it? Where did she lay? When did she come to Portland? Did he or did he not come with her? When did she go away Did he
293 or did he not go with her? and what was his occupation during the time?

(Objected to as multifarious and leading.)

Ans. The bark Toulon; she lay near the foot what is now Washington street, at the old Pettigrove wharf, so called; I think she got here in the early part of November, 1845; he, defendant, came with her; she went away some time in February or March, 1846; my impression is that he did not go with her at that time, but that he remained; his occupation, according to my own understanding, was that he was supercargo of the ship at the time the ship came here.

Int. 12. To what port did the ship sail when she left here, and when did she return?

Ans. She sailed for the Sandwich Islands as a regular packet, and returned some time in the latter part of the summer of 1846.

Int. 13. State if she sailed the second time; and if so, for what port, and did the defendant go with her?

(Objected to as immaterial.)

Ans. She did, for the Sandwich Islands; I think the defendant went with her on that trip.

Int. 14. State when she returned, and was the defendant with her?

Ans. She was out about three months; the defendant re-
294 turned with her. The ship was here pretty much all of the winter of 1846–'7.

Int. 15. Do you know of her sailing for China? If so, when, and did the defendant go with her?

(Objected to as above and as leading.)

Ans. I think she sailed from here for China in the early part of 1848, though I would not be positive about the date. The defendant went with her.

Int. 16. Who was supercargo of the vessel during all this time, if you know?

Ans. Capt. Crosby, I think; he had charge of the business altogether of the vessel.

Int. 18. State when the defendant returned to Portland after that trip.

Ans. I think he arrived here on the 17th of August, 1849, after that trip.

Int. 18. State how long he remained here after the arrival last mentioned.

Ans. I don't think he was here over two or three months before he went down to San Francisco; he was doing business here in the firm of Couch & Co.

Int. 19. State where Couch & Co. were located.

(Objected to as immaterial.)

Ans. On the Couch addition.

Int. 20. State where, at that time, was the defendant's residence.

Ans. In Portland.

Int. 21. Point out the house if you can, and the facts constituting his residence.

295 Ans. I don't know that I can designate the particular house at this time; I considered Portland his residence and home.

Int. 22. State if he did not spend a good deal of the time last mentioned at Oregon City.

Ans. I don't know of his being at Oregon City much at that time.

Int. 23. State when he next returned to Portland.

Ans. I don't think he was absent more than two months at any one time.

Int. 24. Do you know of his returning to Portland in 1850? and if so, state as near as you can the time.

Ans. I can state any time. He was here, I think, it was in the fall of 1850.

Int. 25. State whether the defendant did not go to the States early in the fall of 1850.

(Objected to as immaterial.)

Ans. I know he went from here to the States, but what time it was I can't state.

Int. 26. Was or was not the Warren House a tavern or hotel? and had the defendant, to your knowledge, any other control over it than as boarder?

(Objected to as immaterial.)

Ans. It was a hotel; the defendant had no control over it, to my knowledge, than as a boarder.

Int. 27. State whether, in making your affidavit in proving

296 up the defendant's donation, it was not based more upon your general knowledge of the defendant being about Portland, than upon your knowledge of his having and owning a residence upon the Stark tract specially.

(Objected to as leading and immaterial.)

Ans. When I made my affidavit there was a question in my mind what was required of a man to do to hold a donation claim. The information appeared to be like this: If a man was on a claim, and pro-

ceeded to improve the land, cultivate it, and build, he was considered as making his residence there. I filed my affidavit upon the ground that Mr. Stark was cultivating, by himself or agent, the land at the time I swore to in the affidavit.

Int. 28. State, if you know, when the defendant returned from the States in 1851.

(Objected to as presupposing that the defendant did return in 1851.)

Ans. I cannot say positively; I think it was some time in the summer of 1851.

Int. 29. When he did return, do you know in what part of the town he resided, and in what house?

Ans. He resided on the Stark claim, in the house known as one of the Molthrop houses.

297 Int. 30. Was there anybody residing in that house at the time of his return?

Ans. I do not know.

Examination-in-chief resumed:

Int. 1. What was your business in 1849, 1850–'1–'2, and '3?

Ans. I was acting sheriff of Washington county.

Int. 2. Was Portland a part of Washington county during those years?

Ans. It was.

Int. 3. When Stark went upon this trip to China did he leave any property in Oregon? If so, what?

(Objected to as immaterial.)

Ans. He left some horses and cattle. My impression was that Stark owned also one half of the Portland claim.

W. H. BENNETT.

Adjourned at $12\frac{10}{60}$ p. m. to meet as before at 2 o'clock p. m.

In the circuit court of the State of Oregon for the county of Multnomah, *ss:*

STARR, pl'ff,
vs.
STARK, def't.

2 o'clock p. m., March 15th, parties met as before, and

298 proceeded to the examination of Capt. Wm. E. Molthrop, a witness produced on part of the defendant. Examined by Hon. A. E. Wait for defendant.

Int. 1st. Are you acquainted with the parties to this suit?

Ans. I am.

Int. 2. How long have you been acquainted with the defendant?

Ans. Since 1844.

Int. 3. Did you at any time come to Portland, Oregon, with the defendant? If so, when?

Ans. I never came to Portland with him.

Int. 4. How long have you been acquainted with the defendant in Oregon?

Ans. Since 1850.

Int. 5. Have you any means of knowing where the defendant regarded his residence to be prior to that time?

(Objected to as calling for hearsay evidence, and as incompetent.)

Ans. He told me in San Francisco that he owned part of Portland, and I had a number of houses, and that he had land that he would sell me if I wished to take them up and put them up there, which I did. I bought the land of him, and got my deeds from him
299 for block 28. This was in March, 1850.

Int. 6. Did he say anything at that time as to whether he was a resident of Oregon?

(Objected to as above, and as immaterial.)

Ans. He told me that was a resident of Portland, Oregon, and made his home here.

Int. 7. Did the defendant tell you prior to this time where his residence was?

(Objected to as above.)

Ans. He told me in 1848, in New York, that he intended to come to Portland, and establish the town of Portland.

Int. 8. Did he then state where his home was?

Ans. He did not.

Int. 9. Did he then call himself an Oregonian?

Ans. No.

Int. 10. How early do you remember of the defendant's claiming Portland, Oregon, to be his home and residence?

(Objected to as above.)

Ans. In 1850.

Int. 11. Did you see the defendant between 1848 and 1850?

Ans. I did not; he left for San Francisco, and I made a voyage to the West Indies.

Int. 12. Where has the defendant resided since you came to Oregon up to the time that he went east in 1863?

(All that part of the question relating to his residence since
300 September, 1853, objected to as irrelevant.)

Ans. The most of the time in Portland.

Int. 13. In what part of Portland did he reside during that time?

Ans. On block 28 of Stark's plot.

Int. 14. Is block 28 on the Stark tract?

Ans. I suppose it is. I always considered it so.

Int. 15. State, if you know, whether he cultivated any ground on his claim during your residence in Portland?

Ans. I saw him digging some post holes, and he cultivated his garden. He worked about as much as people generally do when they are holding a claim.

Int. 16. What relationship do you bear to the defendant?

Ans. He is my son-in-law.

Cross-examination—by Col. W. W. Chapman for pl'ffs:

Int. 1. State when you first arrived in San Francisco, and what time you left there for Oregon.

Ans. I arrived in San Francisco in February, 1850, and left San Francisco in April, and arrived at the Columbia bar in May of the same year.

Int. 2. State how long you remained at Portland, and when
301 you returned to San Francisco.

Ans. I think I left here for San Francisco in July, 1850.

Int. 3. From the time that you arrived in San Francisco till you left there where was Benj. Stark?

(Objected to as immaterial.)

Ans. He was in San Francisco.

Int. 4. State, if you know, what he was doing there.

(Objected to as above.)

Ans. He was in business there, and had a house here at the same time.

Int. 5. State, as near as you can, when you purchased block 28.

Ans. I think it was in September or October, 1850.

Int. 6. What houses were they which you put up?

(Same objection as above.)

Ans. The houses which Mr. Cree and myself at this time occupied, one being on the northeast corner and the other on the southeast of said block.

Int. 7. State who first occupied the house on the northeast corner of the block, and how long?

Ans. Mr. Parrish till the spring of 1851.

Int. 8. State who next occupied it, and how long?

Ans. Myself and Mr. Stark. I was there till 1852, and Mr. Stark was there at the same time. I left him there and went on to the farm.

302 Int. 9. If you parted with that house, state when, and to whom

(Objected to as above.)

Ans. I think I parted with it in 1854, directly after my family came out. I gave it Mrs. Stark, my daughter, Elizabeth.

Int. 10. State whether you received rents for that house up to the time of your sale, and also from whom?

(Objected to as immaterial.)

Ans. I received rents from Mr. Parrish while he was in it; that is all the rent I ever received for it.

Int. 11. State whether Major Tucker occupied that house; and if so, under whom?

(Objected to as above.)

Ans. He lived there; Stark and myself occupied the upper part, and Benj. Tucker the lower part; he came there with the understanding that his wife should take care of the rooms which we occupied for the use of the lower part.

Int. In your answer to interrogatory 13th of your direct examination do you mean to be understood that block 28 was the place of residence of Benjamin Stark from the time you first knew him in Portland until he went east in 1863?

303 Ans. No.

Int. 13. Did Stark live on that block before the spring of 1851 as a boarder or otherwise?

Ans. Not to my recollection.

Int. 14. State, if you know, whether defendant went east in the fall of 1850, and when he returned.

(Objected to as immaterial and leading.)

Ans. I can't tell what time of the year it was.

Int. 15. State, if you can, whether the defendant did not return to California from here on the Carolina just before the 4th of July, 1850.

Ans. I don't know what time he returned. I left him here.

Int. 16. What was the style of the house in which Benjamin Stark was interested in San Francisco?

(Objected to as above.)

Ans. Stark & Co.

Int. 17. Do you know when that house closed? If so, state.

(Objected to as above.)

Ans. I think they failed in November, 1850.

Int. 18. State who was the managing partner of the house of Stark & Co., in San Francisco?

(Same objection as above.)

Ans. I suppose Stark was.

Int. 19. Upon what claim was the house of Couch & Co., in Portland, to which you have referred, of which Stark was a member?

304 (Same objection as above.)

Ans. I suppose it was on the Couch claim.

Examination-in-chief resumed:

Int. 1. Where did Stark board in Portland prior to his residence on block 28?

Ans. I suppose he boarded at the restaurants. When I was here with the vessel he would often board on the vessel. There was no other place than Mrs. Epperson at this place.

Int. 2. Was Mrs. Epperson living on the Stark tract?

Ans. No.

Int. 3. Do you recollect of the defendant's boarding at the Warren House?

Ans. I do; he boarded there.

Int. 4. Was the Warren House on the Stark tract?

Ans. I believe it was.

Int. 5. How long do you know of the defendant's residing on block 28? From what time to what time?

(That part of the question which calls for his residence after September, 1853, objected to.)

Ans. I was away a part of the time. I know that he resided there a part of the time from 1851 up to the time of his marriage, and he has resided there since that time up to the time he went east

305 in 1863.

Int. 6. Do you know of his occupying and sleeping in a little office near where Cree's brick building now stands.

Ans. I do. He slept there all of a year before his marriage. This was on block 40 on Stark's tract.

Int. 7. State the value of the improvements made by Stark on his tract.

(Objected to as complicated and irrelevant.)

Ans. I can't state; well, I should think from $40,000 to $80,000.

Int. 8. Who owned the little office occupied by Stark for a year previous to his marriage, and when was that office built?

Ans. It was built in the fall of 1850 by the agent of Stark, and owned by Stark.

Int. 9. Have you known Stark to claim any other place than Portland, Oregon, as his home and residence since you have known him?

Ans. I have not.

Int. 10. State, if you know, whether his absences from Portland have been upon business since you have known him.

Ans. They have, I think. I don't think they have been on pleasure.

306 Cross-examination resumed:

Int. 1. You refer to Mr. Stark having boarded at the Warren House. State when that was; was it before or after he came up here on the Carolina?

Ans. After he came up on the Carolina.

Int. 2. State whether or not it was shortly preceding you and he going into the house on block 28 that he boarded at *at* the Warren House.

Ans. I think it was after he came back from the States.

Direct examination resumed—by Judge Wait for def't:

Int. Did he not board at the Warren House after as well as before he commenced his residence on block 28?

Ans. He did get his meals there, but kept his rooms on block 28, as far as I know.

W. E. MOLTHROP.

4½ p. m., Mar. 15, 1865, by consent of parties adjourned to 9 o'clock a. m. the 16th inst.

307 In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, def't.

9 o'clock a. m., March 16th, parties met according to adjournment, (same parties present as before;) proceeded to the examination of John H. Couch, witness on part of the defendant.

Deposition of John H. Couch, taken before S. A. Moreland, notary public, to be read in evidence on the trial of the above cause.

Examined by Judge Wait for def't:

Int. 1st. Are you acquainted with the parties to this suit?

Ans. I am.

Int. 2. How long have you been acquainted with the defendant Stark?

Ans. Since 1845.

Int. 3. Did you and the defendant come to Oregon together at any time? If so, when?

Ans. We came to Oregon together in 1849.

308 Int. 4. Did you see the defendant between the years 1845 and 1849?

Ans. I did. I was with him at sea for about five months in 1847, and I also saw him at home in New York.

Int. 5. Have you any means of knowing where the defendant regarded his home and residence at the time you saw him at home in Newburyport, New York, and at sea? If so, state.

(Objected to as irrelevant and incompetent.)

Ans. Only what he told me himself. I have no other means of knowing. He told me that he calculated to make Oregon his home.

Int. 6. At what time in the year did he come to Oregon with you?

Ans. In August, 1849.

Int. 7. Where has the defendant resided since 1849 up to 1860?

Ans. Between Oregon, New York, and San Francisco. I could not tell the precise time in each place.

Int. 8. Where did the defendant reside between the first day of September, 1849, and the first day of September, 1853?

Ans. In Oregon and San Francisco.

Int. 9. State, if you know, where the defendant regarded his home and residence from August, 1849, to 1860.

(Objected to as incompetent and irrelevant.)

309 Ans. I don't know where himself regarded it. He was in business here and also in San Francisco.

Int. 10. Was Stark elected to the legislature from Portland at any time? If so, when?

Ans. I could not tell when.

Int. 11. State, if you know, where the defendant regarded his home and residence from the first of September, 1849, to the 10th of September, 1853.

(Objected to as irrelevant and incompetent.)

Ans. I suppose he considered Oregon his home.

Int. 12. Did or did not the defendant reside upon his land claim in the city of Portland, Oregon, from the first day of September, 1849, to the 10th day of September, 1853?

Ans. He was here and in San Francisco during that time. He resided here most of the time.

Int. 13. Where did the defendant reside from *from* September, 1853, during the next five or six years?

Int. 6. Do you know of his occupying and sleeping in a little office near where Cree's brick building now stands.

Ans. I do. He slept there all of a year before his marriage. This was on block 40 on Stark's tract.

Int. 7. State the value of the improvements made by Stark on his tract.

(Objected to as complicated and irrelevant.)

Ans. I can't state; well, I should think from $40,000 to $80,000.

Int. 8. Who owned the little office occupied by Stark for a year previous to his marriage, and when was that office built?

Ans. It was built in the fall of 1850 by the agent of Stark, and owned by Stark.

Int. 9. Have you known Stark to claim any other place than Portland, Oregon, as his home and residence since you have known him?

Ans. I have not.

Int. 10. State, if you know, whether his absences from Portland have been upon business since you have known him.

Ans. They have, I think. I don't think they have been on pleasure.

306 Cross-examination resumed:

Int. 1. You refer to Mr. Stark having boarded at the Warren House. State when that was; was it before or after he came up here on the Carolina?

Ans. After he came up on the Carolina.

Int. 2. State whether or not it was shortly preceding you and he going into the house on block 28 that he boarded at *at* the Warren House.

Ans. I think it was after he came back from the States.

Direct examination resumed—by Judge Wait for def't:

Int. Did he not board at the Warren House after as well as before he commenced his residence on block 28?

Ans. He did get his meals there, but kept his rooms on block 28, as far as I know.

W. E. MOLTHROP.

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9 o'clock a. m., March 16th, parties met according to adjournment, (same parties present as before;) proceeded to the examination of John H. Couch, witness on part of the defendant.

Deposition of John H. Couch, taken before S. A. Moreland, notary public, to be read in evidence on the trial of the above cause.

Examined by Judge Wait for def't:

Int. 1st. Are you acquainted with the parties to this suit?

Ans. I am.

Int. 2. How long have you been acquainted with the defendant Stark?

Ans. Since 1845.

Int. 3. Did you and the defendant come to Oregon together at any time? If so, when?

Ans. We came to Oregon together in 1849.

308 Int. 4. Did you see the defendant between the years 1845 and 1849?

Ans. I did. I was with him at sea for about five months in 1847, and I also saw him at home in New York.

Int. 5. Have you any means of knowing where the defendant regarded his home and residence at the time you saw him at home in Newburyport, New York, and at sea? If so, state.

(Objected to as irrelevant and incompetent.)

Ans. Only what he told me himself. I have no other means of knowing. He told me that he calculated to make Oregon his home.

Int. 6. At what time in the year did he come to Oregon with you?

Ans. In August, 1849.

Int. 7. Where has the defendant resided since 1849 up to 1860?

Ans. Between Oregon, New York, and San Francisco. I could not tell the precise time in each place.

Int. 8. Where did the defendant reside between the first day of September, 1849, and the first day of September, 1853?

Ans. In Oregon and San Francisco.

Int. 9. State, if you know, where the defendant regarded his home and residence from August, 1849, to 1860.

(Objected to as incompetent and irrelevant.)

309 Ans. I don't know where himself regarded it. He was in business here and also in San Francisco.

Int. 10. Was Stark elected to the legislature from Portland at any time? If so, when?

Ans. I could not tell when.

Int. 11. State, if you know, where the defendant regarded his home and residence from the first of September, 1849, to the 10th of September, 1853.

(Objected to as irrelevant and incompetent.)

Ans. I suppose he considered Oregon his home.

Int. 12. Did or did not the defendant reside upon his land claim in the city of Portland, Oregon, from the first day of September, 1849, to the 10th day of September, 1853?

Ans. He was here and in San Francisco during that time. He resided here most of the time.

Int. 13. Where did the defendant reside from *from* September, 1853, during the next five or six years?

Ans. I could not tell.

Int. 14. Where did the defendant reside from 1852 to 1856?

Ans. That I do not know.

Int. 5. Do you know that the defendant resided away from Portland during any of that time?

Ans. I do not.

Int. 6. Did you not see the defendant daily or weekly in Portland from 1850 to 1856?

310 Ans. I cannot state as to that. I might have seen him every day, and there might have been a month or six months that I did not see him.

Int. 17. Did or did not you regard the defendant's residence to have been upon his land claim in Portland from Septemcer 1st, 1849, to September 1st, 1853?

(Objected to as before.)

Ans. I did.

Int. 18. Do or do not you regard the defendant's residence to have been upon his land claim in Portland since September 10th, 1853, up to 1860?

(Same objection as above.)

Ans. I could not say that I did for that length of time.

Int. 19. Up to what did you consider the defendant's residence to be upon his land claim in Portland?

(Same objection as above.)

Ans. I could not state the exact year.

Int. 20. Have you any means of knowing that the defendant claimed his home and residence to be in Portland, Oregon, as early as 1847?

(Same objection as above.)

Ans. I know he did. I left here with him in 1847.

Int. 21. How long was he here in 1847?

(Same objection as above.)

Ans. I could not say. He was going back and forth between here and the Sandwich Islands.

311 Int. 22. What property did the defendant have in Portland in 1847?

(Objection same as above.)

Ans. He was considered to own half the claim.

Int. Did he own any cattle or horses?

(Same objection as above.)

Ans. He did, both.

Cross-examination—by Hon. A. Holbrook for plaintiffs:

Int. 1. State whether Mr. Stark was not in San Francisco from September, 1849, until June, 1850.

(Objected to as immaterial and incompetent.)

Ans. He was not.

Int. 2. When did he come here in 1850?

Ans. Between September, 1849, and the spring of 1850; he was back and forth two or three times, I think; I won't be certain.

Int. 3. Did he not come up here on the steamer Carolina in 1850?

Ans. I don't know that he did; I never saw the Carolina that I know of.

Int. 4. Were you in Portland in June, 1850? If not, where were you?

Ans. I think I was at the Dalles.

Int. 5. When did you go to the Dalles, and when did you return, as near as you recollect?

Ans. I don't recollect the date; I was absent about six weeks.

Int. 6. Was Stark here when you left?

312 Ans. He was not.

Int. 7. Was he here when you returned?

Ans. I would not be certain as to that; I think he was.

Int. 8. Did Stark go east in the fall of 1850?

(Objected to as immaterial.)

Ans. I don't recollect.

Int. 9. From the time that he came here in 1850, did not Stark have a sleeping room in the store of Couch & Co., on your claim, which he regularly occupied?

(Same objection as above.)

Ans. I don't think he did.

Int. 10. Do you mean to say that he did not have such a room?

Ans. I won't be certain; he might have moved into his house before that time; he did soon after.

Int. 11. Until he moved into his house, do you know of his having any home except Couch & Co.'s store?

(Objected to as leading.)

Ans. Yes. He never got his meals there, and hardly ever slept there.

Int. 12. Where did he sleep?

Ans. I could not tell that.

Int. 13. In your answer to interrogatory 12th of your examination-in-chief you state that the defendant resided here most of the time referred to in that question, to wit, from September,

313 1849, to the tenth of September, 1853. Do you mean to say that during that time he had a residence on the Stark tract?

Ans. I do.

Int. 14. Please to state where that residence was, what building, and who owned it.

Ans. I think part of the time in the City Hotel, and part of the time in his own house.

Int. 15. When was the City Hotel built, and who kept it?

Ans. I don't know what year it was built. Frank De Witt kept it.

Int. 16. Do you know that Benjamin Stark had any interest in that hotel?

(Objected to as immaterial.)

Ans. I do not.

Int. 17. Did you know him as a boarder at that house, or as having some control over it?

(Objected to as above.)

Ans. I knew him as a boarder; I knew nothing about his control.

Int. 18. When did you first know him to board there?

Ans. I can't tell.

Int. 19. Have you any recollection of having seen him there before the time of your absence in the upper country?

Ans. I can't say that I have.

Int. 20. In your answer to interrogatory 14th of your cross-examination, you state that the defendant resided part of the time
314 in his own house—to what house do you refer? Designate it by the block, or the person who built it.

Ans. Stark built it.

Int. 21. State, as near as you can, where that house stood.

Ans. I believe they call it First street, on First and Ash street, I think.

Int. 22. State if it was one of the houses said to have been brought out by Capt. Molthrop.

(Objected to as above.)

Ans. I think it was.

Int. 23. State when the first time you knew Benjamin Stark to have a place of residence on the Stark tract which you could call his own.

Ans. I could not tell you.

Int. 24. Did you not call the Molthrop house his own residence?

Ans. I supposed it to be his.

Int. 25. Do you know of any other place (dwelling-house) which, prior to his residence in the Molthrop house, was called or known as belonging to Benjamin Stark on that tract?

(Objected to as above.)

Ans. I do not, any further than the Molthrop house.

Int. 26. Was there any other than the Molthrop house, prior to that time, on the Stark tract, known by you or called Stark's own residence, which he occupied, claimed, and controlled?

(Objected to, immaterial, leading, and multifarious.)

315 Ans. I do not know of any.

Int. 27. Was you one of Stark's witnesses to prove up his donation claim?

Ans. I was.

Int. 28. Have you been shown at this examination what purports to be a copy of your affidavit?

Ans. I have.

Int. . State whether that affidavit was based upon the general claims of residence at Portland, or upon a special knowledge of a house and home claimed and occupied by Benjamin Stark upon the Stark tract from the 10th of September, 1849, to the 10th of September, 1853.

(Objected to as above.)

Ans. That was my belief.

Int. 30. Upon what facts within your own knowledge was that belief founded?

Ans. I believed that the claim actually belonged to him.

Int. 31. Did you believe that the claim belonged to him because he had purchased it, or because he had a house, residence, and occupancy thereon from the 10th of September, 1849, to the 10th of September, 1853?

(Objected to as above.)

Ans. From both.

Int. 32. Can you state any other house, and residence therein, by Benjamin Stark, on the Stark tract, than those you have
316 already mentioned? If so, state them.

Ans. I cannot.

JNO. H. COUCH.

In the circuit court of the State of Oregon for the county of Multnomah, *ss:*

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, def't.

Deposition of James B. Stephens, a witness produced on part of defendant, in the above-named suit, taken before S. A. Moreland, notary public, to be read in evidence on the trial of said cause.

Examination—by Judge Wait for def't:

Int. 1. Are you acquainted with the parties to this suit?

Ans. I am.

Int. 2. How long have you been acquainted with them?

Ans. I have been acquainted with Stark since some time in 1846. I have been acquainted with Starrs ever since they came to Portland.

Int. 3. How near have you resided to Portland since 1844?
317 Ans. I have resided on the place where I now live since the first day of November, 1845; just across the river from Portland.

Int. 4. How often have you been in Portland since 1845?

Ans. I have been in Portland in the daytime about as much as on the other side of the river; I kept a ferry here for 15 or 16 years.

Int. 5. When did the defendant first become a proprietor of the town of Portland?

(Objected to as immaterial.)

Ans. I think in the latter part of 1846.

Int. 6. What interest did he acquire in Portland at that time?

(Objected to as irrelevant.)

Ans. I understood him to own half of it by purchase.

Int. 7. Where do you understand the defendant's home and residence to have been from 1847 up to 1860?

(All that part of the question calling for the defendant's residence before September, 1849, and after the 10th of September, 1853, objected to as irrelevant.)

Ans. In 1846 he contracted with me to make him a lot of beef barrels, which I made him; he then lived here in Portland, and I considered it his home; then in 1847 he went away from here, I think;

in 1848 I was away nearly a year, and I did not see anything of Stark until I came back home in 1849; in the fall of 1849 Stark was
318 here and I was here; he purported to me to make this his home then. I went down that fall to California, and in the winter of 1849 I saw Stark there; I had frequent conversations with him and Mr. Lownsdale there in regard to the Portland claim; in the spring of 1850 I came up on the "Tarquina;" Stark was supercargo or owner; he managed the business of the vessel; I bought of him ten barrels of flour and some pine lumber; he likewise told me that he had some lumber on board for building a house for himself in Portland; a short time after I got up I saw Stark here again; I have seen him here off and on ever since that time, until he went to Congress, and once since.

Int. 8. State where he (the defendant) regarded his home and residence to be when you saw him in California in 1849 and 1850?

(Objected to as above, and as general.)

Ans. He always professed to me to be a resident of Portland.

Int. 9. Where did you consider the defendant's residence to be from the summer of 1849 up to 1860?

(Same objection as above.)

Ans. I knew him to have his family here from the time of his marriage, and he was here from 1849 up to the time of his going to Congress, and I always considered his residence to be here from 1849, though he might have been to California and back in the time.

319 Int. 10. Do you know at what houses he boarded before he was married?

Ans. I don't think I do.

Int. 11. Do you remember of his living at the corner of First and Ash streets, on block 28?

Ans. I have seen him there sometimes, but don't know anything about his residence there particularly.

Cross-examination—by counsel for plaintiffs:

Int. 1. When you knew Benjamin Stark in 1847, at Portland, where did he board or live?

Ans. He lived in the house known as the "Pettigrove House."

Int. 2. Did he keep house there, or did he board with some other person? If so, with whom?

Ans. I think he boarded a part of the time at least with a man by the name of Buck.

Int. 3. Who was master of the "Tarquina?"

(Objected to as immaterial.)

Ans. An old gentleman known as Capt. Molthrop.

Int. 4. Was you in Portland when the Carolina arrived in the summer of 1850? and if so, did or did not Benjamin Stark come up on her?

Ans. I was here, but do not know whether he came up on her or not.

Int. 5. State whether he did not return upon her to San
320 Francisco.

Ans. I do not know; I went down on her, but being sick all the way down, I do not know who was on board.

Int. 6. State whether you saw him after arriving there?

Ans. I do not recollect.

Int. 7. Was you acquainted with the house in San Francisco in which Benjamin Stark was concerned?

(Objected to as immaterial.)

Ans. I was not much acquainted with them; I knew something about them at the time, but don't recollect much about them now.

Int. 8. State, if you know, who appeared to be managing that house or what it was called.

(Same objection as above.)

Ans. I don't recollect.

Int. 9. State, if you can, how early you knew Benjamin Stark to have a house, home, and residence thereat, upon what is known as the Stark tract in Portland?

(All that part referring to "a home thereon" objected to as immaterial.)

Ans. I think he had one there some time in 1850.

Int. 10. To what house do you now refer as being occupied by him as his residence in 1850?

Ans. It was located near the centre of the claim, back a short distance from the river.

Int. 11. Was it the house in which he resided next preceding his going to the Senate?

321 Ans. I think when I first saw him there he was not living in that house, but he did afterwards live there some time; he first lived in a smaller house with Mr. Molthrop; I don't know whether Mr. Molthrop's family was there or not; I understood from Stark that his family was there, but did not see them.

Int. 12. Was this the first place of residence occupied by Benjamin Stark within your knowledge upon the Stark tract?

Ans. It was not.

Int. 13. Where else had he a house in which he resided and controlled?

(Objected to on the ground that it was not necessary to have had and controlled a house.)

Ans. I went to see him several times in the same neighborhood, but not in that house where I supposed he lived, but what control he had there that I don't know.

Int. 14. When you went to see him as last stated, was it before or after the time that told you that his family was there?

Ans. It was before.

Int. 15. What evidence had you that the first house where you saw him was his residence?

Ans. I inquired of those whom I thought knew where I could find him, and they told me he lived there, and I went there and found him.

322 Int. 16. Do you say that you found him occupying the house as the resident of it?

Ans. I found him there as an inmate of that house; I can't say who kept the house.

Int. 17. Was not that house a hotel? and if so, who occupied it as such?

(Objected to as immaterial.)

Ans. My recollection is that it was a partnership house, and that Mr. Loomis owned a part of it and lived in a part of it.

Int. 18. Did Loomis keep tavern?

(Objected to as above.)

Ans. I think he kept some boarders, and sold some goods in one of the rooms for a short time.

Int. 19. Do you mean to be understood that that house was owned in partnership between Loomis and Stark?

Ans. I don't recollect who owned the other part; Loomis told me he owned only a part of it.

Int. 20. State as near as you can what time in the year it was that you saw Stark at the Loomis house?

Ans. I saw him there frequently, but I can't recollect the dates.

Int. 21. Can you state any other place of residence which he had on that tract than those you have already described?

323 Ans. I have already described three places, and I know of no other; I know he lived at two places on that tract besides the house that he built and lived in so long.

Int. 22. Are the two places that you last referred to the two places that you have described?

Ans. Those places are two of the places that I have described.

Int. 23. Is the third place the one where you say he built the home and lived so long?

Ans. It is one of the three houses already described.

Int. 24. Do you know that Benjamin Stark built the house where you say he lived so long?

Ans. I understood he built it for his own use; and he did live in it, for I saw him there frequently with his family.

Int. 25. Can you state what year you saw Stark in the house last mentioned?

Ans. I think it was in 1851.

JAMES B. STEPHENS.

One o'clock p. m. Mar. 16th, '65, adjourned for one hour.

324 In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, def't.

March 16, '65, two o'clock p. m., parties met and proceeded to take the deposition of Wm. Seton Ogden, to be read in evidence on the trial of the above-entitled suit.

Examination—by Judge Wait for defendant:

Int. 1. Are you acquainted with the parties to this suit?

Ans. I am.

Int. 2. How long have you been acquainted with them?

Ans. I have been acquainted with Stark from the middle of the year 1849, and with Starr for ten years.

Int. 3. Where was you in the latter part of the year 1849?

Ans. In Portland, Oregon.

(Above questions and answers objected to as irrelevant.)

Int. 4. Was Stark here at that time?

Ans. He was.

Int. 5. Was you a clerk at any time in the house of Couch & Co., in Portland, Oregon? If so, during what time?

325 Ans. I was in the employ of Couch & Co. from August, 1849, to February, 1852.

Int. 6. When did the defendant, Stark, board in Portland during the time you was connected with that house?

Ans. During Mr. Stark's visit to Portland in 1849 he boarded at Capt. Crosby's; during his subsequent residence in Portland he boarded most of the time at De Witt's Hotel, and I think part of the time at the Warren House.

Int. 7. Where was the defendant's home and residence from August, 1849, up to the time you went to the Sandwich Islands in 1861?

(All of this question which calls for defendant's residence after the 10th of September, 1853, objected to as irrelevant and immaterial.)

Ans. As to a large part of that time I cannot answer; during the last half of 1849, 1850, and 1851, and a part of 1852 I think his home was in Portland.

Int. 8. State whether he had property in Portland when you came up with him in 1849.

Ans. I cannot say of my own knowledge that he owned any; he offered to sell me several blocks in Portland at that time.

326 Cross-examination—by counsel for plaintiffs:

Int. 1. Are you acquainted with that part of the Portland claim known as the "Stark tract?"

Ans. I am generally acquainted with the outlines of that claim.

Int 2. Was the Crosby residence upon that tract?

Ans. It was not.

Int. 3. When did you first become acquainted with Benjamin Stark?

Ans. In San Francisco, in the month of July, 1849.

Int. 4. What was his occupation then, if you know?

Ans. At the time of my first acquaintance he was looking out for a city lot to build upon; and before we sailed together on the same vessel, to come to Oregon, he had selected a site and put up a store, leaving his clerk, J. K. Osborne, in charge of his business.

Int. 5. Was the business transacted in the name of a firm? and if so, what was it styled, and who were the members, if you know?

(Objected to as immaterial.)

Ans. The business was transacted under the name of Stark & Co.,

composed of Benj. Stark, Shermans, and Stark, of New York, and, I think, John H. Couch, of Portland, Oregon.

Int. 6. Did you ever see any notice or advertisements of the
327 existence of those houses? and if so, did it or did not it state Benj. Stark to be of San Francisco?

(Objected to as immaterial and not calling for the best evidence.)

Ans. I have seen the notices of those houses in the Weekly Oregonian; the Portland house of Couch & Co. had the names of Couch, Stark, and the two Shermans in their business cards, in small type on the right and left hand corners; the San Francisco house of Stark & Co. in their card in the Oregonian had, to the best of my recollection, *had* similar names in similar places; as to the New York house, I remember nothing.

Int. 7. State whether the cards, in naming the respective members, did not give their respective residences?

(Objected to as last above.)

Ans. My impression is they did not.

Int. 8. State, if you know, when the De Witt Hotel was opened, and when the Warren House?

Ans. The Warren House was opened first in the latter part of 1850, by Coburn; the De Witt Hotel was opened some time afterwards.

Int. 9. Do you know that the defendant, Stark, had any right of occupancy, control, or interest in either of those hotels, or was
328 he but a mere boarder?

(Objected to as immaterial.)

Ans. My impression always was that Stark owned the City Hotel, kept by De Witt; my impression was founded upon the fact that it was notorious that Stark sold said City Hotel, and he placed the purchasers notes in my hands for collection as they became due.

Int. 10. Is the fact that he placed these notes in your hands for collection the only basis of your belief on this point?

Ans. I have answered that question already.

Int. 11. Have you any knowledge of De Witt having a large account for lumber, as exhibited by your books?

(Objected to as immaterial.)

Ans. I have no recollection of any such thing.

Int. 12. You state in answer to the 7th interrogatory in chief, that during the last half of 1849, '50, '51, and a part of '52 Stark's home was in Portland; do you mean to say that, during that time he had a residence upon the Stark tract?

Ans. He boarded during a part of that time, as I before said, on the Stark tract; during part of that time he was in San Fran-
329 cisco or elsewhere; his constant letters to Couch & Co., speak- of his land claim, made me always consider that Stark considered his home and residence in Portland.

Int. 13. During the year 1849, '50, and the early part of '51, can you say that Benjamin Stark had a residence of his own on the Stark tract?

(Objected to as indefinite.)

Ans. He did in 1851. He owned the house in 1850 which he boarded at. In 1849 he did not, to my knowledge.

Int. 14. State what house you mean that he owned and boarded at in 1850?

Ans. The last of 1850, it is my belief, he boarded at De Witt's, shortly after the erection of that house. That is the house that I mean that he owned and boarded at.

Int. 15. State, if you know, whether Benjamin Stark had any house or place of residence occupied by him upon the Stark tract before the opening of the "De Witt House?"

Ans. I cannot say. Before the De Witt House was opened, Stark boarded while at Portland at the "Warren House," kept by Coburn. Whether it was in the early part of 1850 or not I am not certain.

Int. 16. Was you in Portland when the Carolina arrived
330 here in 1850? and if so, was Benjamin Stark a passenger?

(Objected to as immaterial.)

Ans. I was not here.

Int. 17. State how long Benj. Stark remained in Oregon, when he came up with you in 1849?

Ans. About one month.

Int. 18. When did you first see him again in Oregon?

Ans. In the early part to middle part of 1850.

Int. 19. State what month you call the middle part?

Ans. June or July.

Int. 20. Don't you know from your books or correspondence to which you have referred that Benjamin Stark came up and went back on the Carolina in the June of 1850?

Ans. I cannot say. I was absent from Portland during the whole of June.

Int. 21. Can you be positive that you saw Benjamin Stark in 1850 until after July or August, unless you saw him during the stoppage of the Carolina in this port?

Ans. I cannot be positive.

Int. 22. Do you know when the house in San Francisco failed?

Ans. It was about the first of January, 1852, to the best of my recollection.

Int. 23. Did not Benj. Stark continue to be the controlling member of that firm in San Francisco until it failed?

331 (Objected to as immaterial.)

Ans. I think he did.

Int. 24. Did you not at that time regard him as a resident of San Francisco, while that house was in operation?

Ans. I did not.

Int. 25. Did you never see his name advertised as of San Francisco?

(Objected to as immaterial and leading.)

Ans. I have not.

Int. 26. While Stark was in Portland in 1849 and 1850, did he not have a room at Conch & Co.'s store, where he usually slept?

Ans. As to 1849, I answer no. As to 1850, I answer he did.

Examination in chief resumed:

Int. 1. Do you remember of Stark in person selling to W. W. Buck, of Oregon City, paints and materials for the building of the court-house at Oregon City, in the spring of 1850?

Ans. No.

Int. 2. Do you remember of an office built by Sherman for Stark on the Stark tract? and if so, where was it built?

Ans. I remember the office; it was built in the spring of 1850.

332 Cross-examination resumed:

Int. 1. At what time did Stark sell the "De Witt House," and who was the purchaser?

Ans. He sold the "De Witt House" some time in 1852. The purchaser a one armed man; I think his name was Bridges.

WM. SETON OGDEN.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, def't.

Deposition of J. D. Holman, a witness on part of the defendant, taken before S. A. Moreland, notary public, to be read in evidence on the trial of the above-entitled cause, Col. W. W. Chapman and Hon. A. Holbrook appearing for pl'ffs, and Judge Wait for def't.

Int. 1. How long have you been acquainted with the defendant Stark?

333 Ans. I do not remember when I first became acquainted with Benj. Stark. I think it was in 1848 or 1849, and have been more or less acquainted with him ever since.

Int. 2. Where have you regarded his residence as having been during the time of your acquaintance with him?

(Objected, generally.)

Ans. Portland, Oregon.

Int. 3. Do you know in what particular locality in Portland, Oregon, he has resided?

Ans. I never knew where his particular residence was until about 1857. He subsequent to that resided at what is known as the Stark residence on the Stark tract, up to the time of his going to Washington as senator.

Cross-examination—by Col. W. W. Chapman for plaintiffs:

Int. 1. Have you any knowledge of the existence of a house in San Francisco, of which Benjamin Stark was a member? If so, state what you know on that subject.

(Objected to as immaterial.)

Ans. I have no knowledge of his having been connected with business in San Francisco.

334 Int. 2. State upon what facts your belief was based of his being a resident of Oregon from 1849 up till 1857?

Ans. My belief of his having been a resident of Portland was based upon the fact that I had always in conversation with him, and in connexion with other facts of his being here, understood him to claim Portland as his home.

J. D. HOLMAN.

Four o'clock p. m., March 16th, 1865, parties adjourned to meet at 9 a. m. of to-morrow, 17th inst.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, plaintiffs,
versus
BENJAMIN STARK, defendant.

At 9 o'clock a. m., March the 17th, 1865, parties met as per adjournment, and proceeded to take the deposition of Peter G. Stephens, a witness produced on part of the defendants, to be read in evidence on the trial of the above-entitled suit.

335 Examination—by counsel for defendant, Hon. A. E. Wait.

Int. 1. How long have you resided in Oregon?

Ans. Since the fall of 1843.

Int. 2. How long have you been acquainted with the defendant, Benjamin Stark?

Ans. I can't say exactly when I first became acquainted with him. I think it was in 1844, or it might have been before. I have an indefinite idea that he came here on some of the vessels.

(Above question and answer objected to as irrelevant.)

Int. 3. Have you been acquainted with him as long as 18 years?

Ans. Yes.

(Objected to as above.)

Int. 4. Where do you regard his residence to have been for the last 18 or 20 years?

(Objected to as immaterial, and as calling for the opinion of the witness.)

Ans. Portland, Oregon.

Int. 5. Do you know in what particular part of Portland he has resided?

Ans. I do not, except I saw him at Pettigrove's in early times.

336 Cross-examination—by Col. W. W. Chapman for plaintiffs:

Int. 1. Where have you resided since you first came to Oregon?

Ans. At Oregon City up to 1850. Then at the mouth of the Columbia river for about two years and a half, and the balance of the time at Oregon City, until in 1861, when I moved to Portland.

Int. 2. Was you residing at the mouth of the Columbia in June, 1850?

Ans. No, sir.

Int. 3. Was you in San Francisco or California in June or July, 1850? If so, did you see Benjamin Stark there?

(Objected to as immaterial.)

Ans. I was there at that time, but don't recollect particularly that I saw Stark there. I might have seen him there, for I recollect that I saw some Oregonians there, but do not remember to have seen Stark.

Int. 4. Being at the mouth of the Columbia after July, do you remember to have seen Benjamin Stark arrive as a passenger from California or elsewhere during that summer or fall?

Ans. I have no recollection of seing him.

Int. 5. Are you acquainted with the boundaries of the Stark
337 tract in this town.

Ans. I am not.

Examination-in-chief resumed—by defendant's attorney, Hon. A. E. Wait:

Int. 1. When did you come up from California in 1850, and on what vessel?

Ans. I came up on the Carolina, and I think it was not far from the middle of July.

Int. 2. State your reasons for supposing that Stark resided at Portland, Oregon?

Ans. From having seen him here frequently, and understanding that he was somewhat engaged or concerned in this town with Pettigrove and Lovejoy, were probably the most prominent reasons inducing me to believe that he resided here. I supposed he lived here, just as people would suppose that I lived at Oregon City, by seeing me about there, and doing business there.

Cross-examination resumed—by pl'ffs' attorney:

Int. 1. Was Benj. Stark on the Carolina when you came up on her?

Ans. I don't recollect that he was.

Int. 2. Did you know a house in San Francisco by the firm name of Stark & Co.?

338 Ans. I don't recollect of such a house.

P. G. STEWART.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant.

STATE OF OREGON, *Multnomah county, ss:*

I, S. A. Moreland, a notary public in and for the above-named county and State, do hereby certify that the foregoing and annexed depositions of W. H. Bennett, W. E. Molthrop, John H. Couch, James B. Stephens, Wm. Seton Ogden, J. D. Holman, and P. G. Stewart were taken before me, at my office in the city of Portland, Oregon, on the 15th, 16th and 17th days of March, A. D. 1865, between the hours of 9 o'clock a. m. and 4 o'clock p. m. of said days, pursuant to the notices hereto attached, and were reduced to writing by myself. And I further certify that before proceeding to the ex-

amination the witnesses were each duly sworn to tell the
339 truth, the whole truth, and nothing but the truth, and that the deposition of each witness was read to him, and then by him subscribed.

In testimony whereof, I have hereunto set my hand and affixed my official seal this the twenty-second day of March, A. D. 1865.

[L. S.] S. A. MORELAND,
Notary Public, State of Oregon.

[U. S. rev. stamp, 5 c.]

On the foregoing is the following indorsement:

In circuit court. A. M. and L. M. Starr *vs.* Benj. Stark. May 5, 1865, first filed. In open court opened and filed May 9, 1865.
H. C. COULSON, *Clk.*

Sheriff's fees: serving notices, $2 40.

Notarial fees, 97 folios	$24 25
Seven witnesses sworn	1 75
Cert. and seal	1 00
	27 00

Filed in the supreme court Sept. 2, 1865.
R. WILLIAMS, *Clerk.*

No. 36.

340 In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJAMIN STARK, def't.
} In chancery.

To said plaintiffs and W. W. Chapman and A. Holbrook, esq'rs, pl'ffs' att'ys:

Take notice that the depositions of Hon. M. P. Deady, Thomas J. Holmes, Edward Hamilton, Wm. P. Doland, Sherbrick Norris, Joseph Jeffers, Orville Risley, James Twilleger, Albert Walling, Ralph Wilcox, Thomas Stephens, Reub. Mendenhall, and Aaron E. Wait will be taken before S. A. Moreland, esq., a notary public in and for said county, at his office (Grover & Page's office) in the city of Portland, in said county, commencing on the 28th day of April, A. D. 1865, at 10 o'clock a. m., and continue from day to day, Sundays excepted, between the hours of 9 o'clock a. m. and five o'clock p. m., until completed, at which time and place you can appear and cross-examine said witnesses if you see proper.

Yours, respectfully,
GROVER & PAGE, STRONG, and WAIT & KELLEY,
Att'ys for Def't.

341 On the foregoing is the following indorsement:

Circuit court, in chancery. A. M. and L. M. Starr, pl'ffs, *vs.* Benj'n Stark, def't. Notice of taking of depositions.

I hereby acknowledge service of a notice of which the within is a copy, this 24th day of April, A. D. 1865.

W. W. CHAPMAN, *Pl'ffs' Att'y.*

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, plaintiffs,
vs.
BENJAMIN STARK, defendant. } In chancery.

Deposition of Hon. M. P. Deady, a witness on part of the defendant in the above-entitled cause, taken before S. A. Moreland, notary public, on the 28th day of April, 1865, to be read in evidence on
342 the trial of said cause, Col. W. W. Chapman appearing for plaintiffs, and Judge A. E. Wait, for def't.

Examination-in-chief—by Hon. A. E. Wait for defendant:

Int. 1. Where did you first become acquainted with the defendant, Benjamin Stark?

Ans. I first saw Benj. Stark at the old store of Couch & Stark, at the lower end of Portland; this was in the latter part of the summer or early part of the autum of 1850. I do not that I became personally acquainted with him at that time, but he was pointed out to me and I observed him. He and some gentlemen were mounting their with their guns to go into the country shooting. I went to the store to deliver a sack of gold dust for Mr. Glenn & Bennett, of Yamhill county, in payment for merchandise that Mr. Bennett had bought from a vessel then lying in the river. I think I delivered the dust to a Mr. Sherman, who was clerk in the establishment. I remained about the store some time and saw Mr. Stark about the establishment, and he, as I before stated, got ready and went
343 out into the woods while I was there. I may have seen Mr. Stark, in Portland, in April, 1850, at the old school-house, on the morning that Judge Pratt delivered his opinion in the "Short habeas corpus" case; I have an impression that I did, but am not positive. Mr. Short resided at Vancouver, and was indicted for murder, growing out of an affray about his land claim; but was discharged on a writ of habeas corpus.

(So much of the answer as is not responsive to the question objected to by plaintiff's attorney, W. W. Chapman.)

Int. 2. Did the defendant, at the store mentioned by you, appear to be one of its proprietors?

(Objected to as irrelevant.)

Ans. He did.

Int. 3. Have you been acquainted with the defendant from the time or times you speak of to the present time?

Ans. I have known of him since that time very well, but I don't think that my personal acquaintance with him or intercourse with him was anything but casual until the fall of 1851. Since then I have known him very well.

344 Int. 4. Where has been his home and place of residence, so far as you are able to determine it, from the time you first became acquainted with him until recently?

Ans. My impression is that his home and place of residence was in Portland, Oregon, from the time I spoke of seeing him at the store Couch & Stark, until he went to the Senate United States in the fall of 1861. And I am certain such was his place of residence from the fall of 1851.

(So much of the above question and answer as relates to a residence since the tenth of September, 1853, objected to as irrelevant.)

Int. 5. Are you acquainted with the tract of land in the city of Portland known as the Stark tract?

Ans. I know the general location of the Stark claim in Portland.

Int. 6. How long have you known the defendant personally to reside upon that tract or claim?

(So much of the question as calls for an answer subsequent to the first of September, 1853, objected to as irrelevant.)

345 Ans. I don't think that I now remember the particular house in Portland in which Mr. Stark resided prior to 1859; at that time he was residing on the Stark tract, with his family. I moved to Portland the last day of October, 1860, and was here off and on from the fall of 1849, previous.

Cross-examination—by Col. W. W. Chapman, att'y for plaintiffs:

Int. 1. If you know, state what was the style of the firm of which Couch was a member, and to which you have alluded.

Ans. My impression is that in common parlance among the people it was called Couch & Stark. I do not recollect now to have seen any firm name on any sign, advertisement, or bill.

Int. 2. Was not the store where you first saw Benj. Stark, upon what is now called the Couch addition to Portland?

(Objected to as immaterial.)

Ans. I think it was on what was then called the Couch claim.

Int. 3. When you speak of def't Stark's residence in Portland, generally, do you mean to be understood as having reference

346 to any particular section of what is now known as the city of Portland? If you do, state what particular section you have reference to.

Ans. I do not mean any particular part of Portland, except where I have so specified in my previous answers. When I say he resided in Portland, I meant what was then understood as the town of Portland, without reference to any particular part of it, except as I have specified in my answer above.

Int. 4. In your answer to the 4th interrogatory, you were certain of Portland being the residence of Benj. Stark since the fall of 1851. State the means of information enabling you to so speak of his resi-

dence, so far as the same existed prior to the first of September, 1853.

Ans. I don't now remember any particular time or place that I saw Mr. Stark from the fall of 1851, until the spring of 1852, but Mr. Stark was a man of note and remark in this country at that time. There was a fierce political contest going on in this country about that time in regard the Location Act, in which Mr. Stark's
347 name was banded about as a prominent actor and adviser in the Whig party as a resident of Portland, Oregon. I remember one conversation with Mr. Stark in relation to this question, which I am confident, in my own mind, must have taken place that winter, although I cannot fix the particular time or place. I saw Mr. Stark at Hilsborough, in the spring of 1852. He was a grand juror at the term of court holden there; he was a witness then in the cause of the "Portland Valley Plank Road Company *vs.* Backenstos;" he testified that a subscription to the stock of that company made by Mr. Sherman, in the spring of 1850, for him, in his absence, was assumed by him as valid and binding. He was a candidate of the Whig party of Washington county (now divided into Washington and Multnomah) that spring for the lower house of the territorial assembly. He was canvassing for the office during that term of court among the people present, and was elected to it in June, 1852. In July, 1852, I served with him at Salem, in a special session of the legislative assembly, as a member from Washington county, including the town of Portland; also at the regular session of 1852–'3. I
348 remember of seeing him at the "Columbia Hotel," in Portland, in the spring of 1853. During this time from the fall of 1851 till the fall of 1853, I lived in Yamhill county, some forty-five miles from Portland, and was here some two, three, four, five, or six times a year.

Int. State what month, if you can, the court was held in Washington county.

Ans. The court at Hillsbrough in the spring of 1852, to which I allude in my answer, was, I think, in the latter part of April; I think so because I remember that Judge Pratt held his first court on the first Monday in March, and the court at Hillsborough was the last court for the circuit.

Int. Is it not possible, consistent with your recollections on the subject, that Benj. Stark was absent to the States some time in the winter of 1851–'2?

Ans. It is possible he might have been absent before the first of January, 1852, but not afterward; and I do not think he was on the first of December, 1851, but possibly he may have been.

349 Direct examination resumed—by Judge Wait for defendant:

Int. 1. Do you of the defendant having an office or offices in Portland? If so, in what part of Portland were such office or offices?

Ans. It strikes me that the first office I remember of Mr. Stark's occupying in Portland was a small building next door north of the

Columbia Hotel. I don't remember of any other office, except when he and Gen. Hamilton had an office in what is now known as the Dennison House, or in the Pioneer, I do not now remember which.

M. P. DEADY.

In the circuit court of the State of Oregon for the county of Multnomah, in chancery.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, def't.

Deposition of Gen. E. Hamilton, to be read in evidence on the trial of the above-entitled suit.

350 Examination—by Hon. A. E. Wait, for def't:

Int. 1. How long have you been acquainted with the def't, Benj. Stark?

Ans. I think I have known Mr. Stark since 1851. I lived in Oregon City at that time. I arrived in Oregon City the 15th of September, 1850, and lived there two or three years.

Int. 2. What has been the character of your acquaintance with Benj. Stark; has it been intimate or otherwise?

Ans. Intimate, as a friend, and as a law partner for several years.

Int. 3. Where has been the home and residence of the def't, Benj. Stark, from the time of your first acquaintance with him up to the time of his appointment to the United States Senate, as a senator from Oregon, in 1861?

(All that part of the question which calls for evidence of defendant's residence since the date of his certificate objected to as irrelevant.)

Ans. Portland, Oregon.

Int. 4. Are you acquainted with the land claim in the city of Portland known upon the maps as the Stark tract?

Ans. I am.

351 Int. 5. State, if you know, whether the defendant has resided upon that tract during the time of your acquaintance with him?

(So much of the above question as calls for evidence of residence after the date of certificate objected to as irrelevant.)

Ans. I think when I first came to the country Mr. Stark was in San Francisco. He shortly afterwards came to Portland, where he has resided ever since the time spoken of.

(The above answer objected to as not responsive to the question.)

Int. 6. Where in Portland has the def't ate, drank, slept, and lived during your acquaintance with him?

(Objected to as above.)

Ans. His residence and office was upon his own tract. He was frequently in the country, and sometimes at the capitol, but his residence and home, as I understood and know it to have been, was on his own tract or claim.

Int. 7. Where was the defendant's first office in Portland, that you remember of?

Ans. On his own tract. The first time I noticed Mr. Stark's
352 office was a short time after I settled in the country. I went to Portland and saw an office on Front street, on Stark's tract, which I was told was Stark's office; I think his name was on it.

Int. 8. In what year was this?

Ans. I think it was in 1850.

Int. 9. How long did the defendant occupy that office?

Ans. I am not certain that the office I speak of was the same office occupied by Stark and myself. He occupied that office until he sold the ground and put up a brick building.

Int. 10. How long were you and the def't law partners, and where was the office of the partnership?

Ans. I came here in October, 1853, and Mr. Stark and I continued in the law business until, I should say, some time in 1859 or 1860. The office was on his tract until he built a brick building on the ground, when we removed our office to the Canton House.

Int. 11. About what amount of improvement has Stark made upon his tract?

(Objected to as immaterial.)

Ans. He had a dwelling-house upon it when I came to the
353 country, and he afterwards built three brick houses and did some fencing. I have no idea of the value of those improvements. Everything in that time cost enormously in those days.

Int. 12. Did you ever know him to make any improvements on any other part of the Portland land claim?

Ans. No, except as he might have contributed to public improvement as a citizen.

Cross-examination of General Hamilton—by Col. Chapman for pl'ff:

Int. 1. You say you saw an office with "Stark" up on it, as Stark's office. When you first saw that office who occupied, and where then was Benj. Stark?

Ans. I think I saw Campbell's name on it, and my impression is that I saw Sherman's name on it also, as Stark's agent. I think Stark was in San Francisco at that time.

Int. 2. Did not Campbell and Sherman then occupy the office referred to, Campbell as a lawyer, and Sherman as agent of Stark?

Ans. I did not know either of them, and was not in the
354 office.

Int. 3. Was not the sign which you refer to the sign of Sherman, agent of Stark, and not an independent sign of Stark?

Ans. It may have been, but I do not remember.

Int. 4. When were you first in that office, and observed it occupied as a place of residence, if you ever so observed it?

Ans. I have said nothing about Mr. Stark's office being his place of residence; he did sleep there, for there was a cot in the back room, but he boarded at his own house.

Int. 5. When was this that you refer to his sleeping there?

Ans. 1853.

Int. 6. Do you know anything relating to his sleeping in that office before 1853?

Ans. No.

Int. 7. Was the Molthrop house the first house of which you can speak of as being the residence of Benj. Stark, on the Stark tract, within your own knowledge.

Ans. There were two houses, one of M. Molthrop and one of Mr. Stark. Mr. Stark always lived in his own house, on the north-
355 east corner of block No. ; he and Capt. Molthrop built houses on the same block; the captain's house was on the southeast corner.

Int. 8. Did Benj. Stark ever reside in or claim a residence in any other house on Stark tract, to your knowledge?

Ans. I do not remember that he did. Before I came here he was a bachelor, and boarded at different places. After his marriage he went into his own house, and resided there ever since, till he left Oregon. Before he *he* was married he had a mess at his own house, Mrs. Tucker being his housekeeper for two or three years. Capt. Molthrop messed with him; they were there for two or three years, as I was informed.

Int. 9. What are your means of information as to Benj. Stark being the owner and having built the house in which you say he and Molthrop messed?

Ans. I have been intimate with Mr. Stark and his family and Capt. Molthrop and his family ever since I came to the country. I have been assisting Mr. Stark in the preparation of evidence and argument to establish his right to his land claim under the donation law. I have derived my information of some of the above facts from
356 that source. I say, in addition to this, that both houses were built prior to my coming here. I have no hesitation in saying, as a lawyer, that he owned that house. I give this as my opinion.

(The opinion of the witness objected to by plaintiffs' attorney, W. W. Chapman, as not responsive to the question.)

E. HAMILTON.

One o'clock p. m., adjourned for ½ hour.

One o'clock and 30 min. p. m., parties met as before.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs, } In chancery.
vs.
BENJ. STARK, def't. }

Deposition of P. Risley, taken before S. A. Moreland, notary public, to be read in evidence on the trial of the above-entitled suit.

357 Examination-in-chief—by Hon. A. E. Wait, att'y for defendant:

Int. 1. How long have you been acquainted with the def't, Benj. Stark?

Ans. From 18 to 19 years.

Int. 2. Where has been his home and place of residence during the time you have known him up to the time he went to the U. S. Senate in 1861.

(Objected to all that part calling for evidence of residence since the first of September, 1853, as irrelevant.)

Ans. The city of Portland.

Int. 3. Where have you resided during that time?

Ans. A portion of the time (about 1 year) in Lafayette, Yamhill county. From that time till 1858 in Clackamas county; from 1858, in Portland.

Cross-examination—by Col. Chapman, plaintiffs' attorney:

Int. 1. Where did you reside from September, 1849, to September, 1853?

Ans. From September, 1849, till July, 1850, I resided at Lafayette, in Yamhill county; from July, 1850, to September, 1853,
358 in Clackamas county.

Int. 2. What knowledge had you of Benj. Stark's residence from September, 1849, till September, 1853?

Ans. My knowledge was a general one, founded upon general report, and from frequently seeing Mr. Stark in Portland.

Int. 3. From September, 1849, till the spring of 1852, did you not visit Portland frequently?

Ans. I visited Portland several times during the year.

Int. 4. Did you always find Benj. Stark at Portland during those visits?

Ans. I do not know.

Int. 5. Have you any knowledge of any particular residence of Benj. Stark in Portland during the time last mentioned; that is, from 1849 till September, 1853?

Ans. I have not.

O. RISLEY.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs, *vs.* BENJ. STARK, def't. } In chancery.

359 Deposition of R. Wilcox, taken before S. A. Moreland, notary public, to be read in evidence on the trial of the above suit.

Examined in chief by Hon. A. Wait for def't.

Int. 1. How long have you been acquainted with the def't, Benj. Stark?

Ans. I first became acquainted with him late in 1846 or early in 1847.

Int. 2. Have you been acquainted with him from that time to the present?

Ans. I have.

Int. 3. Where has been his home and residence during the time you have been acquainted with him, as near as you are able to determine.

Ans. As far as I know his place of residence has been in Portland until he left for the States; that is, during the time that he was in Oregon.

Int. 4. Are acquainted with the Stark tract or land claim in the city of Portland?

Ans. I am.

Int. 5. Do you know on what particular part of the Portland land claim Stark resided?

Ans. His home was with Pettigrove, in the old Pettigrove House, up to the time I left, in February, 1849; subsequently to that
360 time I don't know what part of the town he resided in.

Int. 6. Was the defendant in Portland upon your return in the fall of 1849?

Ans. I do not now recollect how soon after my return I saw him.

Int. 7. Do you remember of the def't's having an office on the Stark tract, in the city of Portland near where Cree's brick building now stands?

(Objected to as leading and irrelevant.)

Ans. I do.

Int. 8. Was the defendant elected to the legislature from Washington county, of which Portland was then a part, at any time?

(Same objection as above.)

Ans. He was, in 1852, I think.

Int. 9. How long did he occupy the office standing near where Cree's brick building now stands?

(Objected to as irrelevant and immaterial.)

Ans. I do not know.

Int. 10. Did the defendant own any property in or about Portland when you first became acquainted with him? If so, what?

(Same objection as above.)

Ans. He owned an interest in the Portland claim, with Pettigrove, as I understood, and horses and cattle in the country somewhere.

361 Int. 11. State, if you know, whether he continued to hold that interest?

(Objected to as irrelevant and not the best evidence.)

Ans. He always claimed, as far as I know.

Cross-examination—by Col. W. W. Chapman, att'y for pl'ffs:

Int. 1. In your answer to the third interrogatory you state that Benj. Stark's residence was in Portland while in Oregon; was there any portion of the time from the first of September, 1849, till the first of September, 1853, when Benj. Stark was not residing in Oregon? and if so, what portion of the time, and where did he reside?

Ans. I think he was absent during a part of that time, but where he was or where he resided I do not now recollect.

Int. 2. What was his occupation when you first knew him, and how long did that occupation continue?

Ans. He seemed to be connected with some of the vessels trad-

ing to this country at that time; I do not know when his business in that respect ceased.

Int. 3. State when you first knew him to have a residence,
362 if at all, upon the Stark tract before referred to?

Ans. I do not recollect when; it was some time after I returned from California, in 1849, that I first knew of his residing there.

Int. 4. You state in your answer to the 7th int. that the defendant had an office on the Stark tract; state, if you can, when that office was built, and who first occupied it?

Ans. I cannot state, for I do not recollect.

Int. 5. Do you not remember that it was first occupied by Sherman, as Stark's agent, and at the same time by Alexander Campbell, att'y at law, as a law office?

Ans. I do not now recollect.

Int. 6. Have you any knowledge that Benj. Stark ever occupied that office as a residence?

Ans. I have not.

Int. 7. Have you any knowledge that Benj. Stark at any time was residing in and doing business in San Francisco?

(Objected to as irrelevant.)

Ans. He was in San Francisco, I think in business there, but how long, or when, I do not recollect.

Direct examination resumed—by Judge Wait for def't:

Int. 1. Have you any more reason to doubt that Portland,
363 Oregon, was the home and residence of the defendant from September 1st, 1849, to September 1st, 1853, than that such was his home and residence in 1852 when elected to the legislature?

(Objected to as argumentative, and calling on the witness for his doubts, and because he does not confine the question of residence to the Stark tract.)

Ans. I do not know that I have.

Cross-examination resumed—by att'y for pl'ffs, Col. W. W. Chapman:

Int. 1. Do you know that Portland, Oregon, was Ben. Stark's residence when he was elected to the legislature in June, 1852?

Ans. Yes, he was staying here.

Int. 2. Do you know that Portland, Oregon, was Ben. Stark's residence from the first of January to the first April, 1850?

Ans. I do not recollect.

Int. 3. Have you any knowledge of Dan'l H. Lownsdale going to San Francisco in the winter of 1850 and there contracting with Benj. Stark respecting the Portland land claim?

(Objected to as immaterial.)

Ans. I know of Lownsdale going to San Francisco, but I do
364 not recollect (if I ever knew) of any contract between them about the Portland claim.

Int. 4. Was you in Portland on the 4th of July, 1850? If so, was Benj. Stark then in Portland?

Ans. I don't recollect.

Int. 5. Have you not some reason to doubt whether Benj. Stark did not reside in San Francisco some portion of the time from September, 1849, till September, 1851?

Ans. As I said before he was some of the time in San Francisco, but while in Oregon his residence seemed to be in Portland.

Examination-in-chief resumed—by Judge A. E. Wait for def't:

Int. 1. Have you ever known the def't to claim a residence any where except in Portland, Oregon, from 1847 till the present time?

Ans. I have not.

Cross-examination resumed—by Col. Chapman:

Int. 2. Did you ever read, or while clerk of Washington county record, an agreement between Lownsdale and Stark respecting
365 the Portland claim, dated in January, 1850, at San Francisco, in which Stark claimed to be a resident of that place?

(Objected to as immaterial and leading.)

Ans. I was not recorder and I do not now recollect of reading such an agreement.

R. WILCOX.

I hereby certify that the above witness is entitled as claimed by him to attendance and mileage amounting to $4 60, 36 miles and one day's attendance.

S. A. MORELAND, *Notary Public.*

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs, *vs.* BENJ. STARK, def't. } In chancery.

Deposition of A. G. Walling, taken before S. A. Moreland, notary public, to be read in evidence on the trial of the above-entitled cause.

366 Examination-in-chief—by Judge A. E. Wait for def't:

Int. 1. How long have you been acquainted with the def't, Benj. Stark?

Ans. Fifteen years.

Int. 2. Where has been his home and residence, as far as you are able to determine it, from the time of your first acquaintance with him up to the time he went to the U. S. Senate, in the year 1861?

(All that part of the question calling for evidence of residence since September 1st, 1853, objected to as immaterial.)

Ans. Portland, Oregon.

Int. 3. Do you know in what part of Portland he resided during that time?

Ans. I know that during the years 1858–'9 he was living on block 28 on the Stark tract. Where he resided in Portland previous to that time I do not know.

ing to this country at that time; I do not know when his business in that respect ceased.

Int. 3. State when you first knew him to have a residence,
362 if at all, upon the Stark tract before referred to?

Ans. I do not recollect when; it was some time after I returned from California, in 1849, that I first knew of his residing there.

Int. 4. You state in your answer to the 7th int. that the defendant had an office on the Stark tract; state, if you can, when that office was built, and who first occupied it?

Ans. I cannot state, for I do not recollect.

Int. 5. Do you not remember that it was first occupied by Sherman, as Stark's agent, and at the same time by Alexander Campbell, att'y at law, as a law office?

Ans. I do not now recollect.

Int. 6. Have you any knowledge that Benj. Stark ever occupied that office as a residence?

Ans. I have not.

Int. 7. Have you any knowledge that Benj. Stark at any time was residing in and doing business in San Francisco?

(Objected to as irrelevant.)

Ans. He was in San Francisco, I think in business there, but how long, or when, I do not recollect.

Direct examination resumed—by Judge Wait for def't:

Int. 1. Have you any more reason to doubt that Portland,
363 Oregon, was the home and residence of the defendant from September 1st, 1849, to September 1st, 1853, than that such was his home and residence in 1852 when elected to the legislature?

(Objected to as argumentative, and calling on the witness for his doubts, and because he does not confine the question of residence to the Stark tract.)

Ans. I do not know that I have.

Cross-examination resumed—by att'y for pl'ffs, Col. W. W. Chapman:

Int. 1. Do you know that Portland, Oregon, was Ben. Stark's residence when he was elected to the legislature in June, 1852?

Ans. Yes, he was staying here.

Int. 2. Do you know that Portland, Oregon, was Ben. Stark's residence from the first of January to the first April, 1850?

Ans. I do not recollect.

Int. 3. Have you any knowledge of Dan'l H. Lownsdale going to San Francisco in the winter of 1850 and there contracting with Benj. Stark respecting the Portland land claim?

(Objected to as immaterial.)

Ans. I know of Lownsdale going to San Francisco, but I do
364 not recollect (if I ever knew) of any contract between them about the Portland claim.

Int. 4. Was you in Portland on the 4th of July, 1850? If so, was Benj. Stark then in Portland?

Ans. I don't recollect.

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ing to this country at that time; I do not know when his business in that respect ceased.

Int. 3. State when you first knew him to have a residence,
362 if at all, upon the Stark tract before referred to?

Ans. I do not recollect when; it was some time after I returned from California, in 1849, that I first knew of his residing there.

Int. 4. You state in your answer to the 7th int. that the defendant had an office on the Stark tract; state, if you can, when that office was built, and who first occupied it?

Ans. I cannot state, for I do not recollect.

Int. 5. Do you not remember that it was first occupied by Sherman, as Stark's agent, and at the same time by Alexander Campbell, att'y at law, as a law office?

Ans. I do not now recollect.

Int. 6. Have you any knowledge that Benj. Stark ever occupied that office as a residence?

Ans. I have not.

Int. 7. Have you any knowledge that Benj. Stark at any time was residing in and doing business in San Francisco?

(Objected to as irrelevant.)

Ans. He was in San Francisco, I think in business there, but how long, or when, I do not recollect.

Direct examination resumed—by Judge Wait for def't:

Int. 1. Have you any more reason to doubt that Portland,
363 Oregon, was the home and residence of the defendant from September 1st, 1849, to September 1st, 1853, than that such was his home and residence in 1852 when elected to the legislature?

(Objected to as argumentative, and calling on the witness for his doubts, and because he does not confine the question of residence to the Stark tract.)

Ans. I do not know that I have.

Cross-examination resumed—by att'y for pl'ffs, Col. W. W. Chapman:

Int. 1. Do you know that Portland, Oregon, was Ben. Stark's residence when he was elected to the legislature in June, 1852?

Ans. Yes, he was staying here.

Int. 2. Do you know that Portland, Oregon, was Ben. Stark's residence from the first of January to the first April, 1850?

Ans. I do not recollect.

Int. 3. Have you any knowledge of Dan'l H. Lownsdale going to San Francisco in the winter of 1850 and there contracting with Benj. Stark respecting the Portland land claim?

(Objected to as immaterial.)

Ans. I know of Lownsdale going to San Francisco, but I do
364 not recollect (if I ever knew) of any contract between them about the Portland claim.

Int. 4. Was you in Portland on the 4th of July, 1850? If so, was Benj. Stark then in Portland?

Ans. I don't recollect.

Int. 5. Have you not some reason to doubt whether Benj. Stark did not reside in San Francisco some portion of the time from September, 1849, till September, 1851?

Ans. As I said before he was some of the time in San Francisco, but while in Oregon his residence seemed to be in Portland.

Examination-in-chief resumed—by Judge A. E. Wait for def't:

Int. 1. Have you ever known the def't to claim a residence any where except in Portland, Oregon, from 1847 till the present time?

Ans. I have not.

Cross-examination resumed—by Col. Chapman:

Int. 2. Did you ever read, or while clerk of Washington county record, an agreement between Lownsdale and Stark respecting
365 the Portland claim, dated in January, 1850, at San Francisco, in which Stark claimed to be a resident of that place?

(Objected to as immaterial and leading.)

Ans. I was not recorder and I do not now recollect of reading such an agreement.

R. WILCOX.

I hereby certify that the above witness is entitled as claimed by him to attendance and mileage amounting to $4 60, 36 miles and one day's attendance.

S. A. MORELAND, *Notary Public.*

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs, *vs.* BENJ. STARK, def't. } In chancery.

Deposition of A. G. Walling, taken before S. A. Moreland, notary public, to be read in evidence on the trial of the above-entitled cause.

366 Examination-in-chief—by Judge A. E. Wait for def't:

Int. 1. How long have you been acquainted with the def't, Benj. Stark?

Ans. Fifteen years.

Int. 2. Where has been his home and residence, as far as you are able to determine it, from the time of your first acquaintance with him up to the time he went to the U. S. Senate, in the year 1861?

(All that part of the question calling for evidence of residence since September 1st, 1853, objected to as immaterial.)

Ans. Portland, Oregon.

Int. 3. Do you know in what part of Portland he resided during that time?

Ans. I know that during the years 1858–'9 he was living on block 28 on the Stark tract. Where he resided in Portland previous to that time I do not know.

Int. 4. When did you first come to Portland to live?
Ans. I came in July or August, 1858.

Cross-examination—by Col. W. W. Chapman for plaintiffs:

367 Int. 1. Did you become acquainted with Benj. Stark in Portland or where?
Ans. In Portland.
Int. 2. What was his occupation? and where, in Portland, did you meet him?
Ans. He was connected in some way with commercial interests, and I met him in the neighborhood of Capt. Couch's place of business. That is where I have seen mostly.
Int. 3. What time in the year 1850 was it that you first saw him?
Ans. I do not remember.
Int. 4. Do you not know that in the year 1850–'51, he resided the most of the time in San Francisco?
Ans. I do not.
Int. 5. What are are the sources of your your information of Stark's residence in Portland from the time you first became acquainted with him until September, 1853?
Ans. Having frequently met him in the city, and by common report.
Int. 6. How frequently were you in Portland during the year 1850 and 1851?
Ans. About three times a month.
Int. 7. Do you think that during the year 1850 you saw Benj. Stark in Portland as often as once a month?
Ans. I can't say.

368 Examination-in-chief—by Judge A. E. Wait for defendant:

Int. 1. Do you wish to be understood as saying that you have generally seen the defendant about Couch's place of business, or that you generally saw him during your earlier acquaintance with him?
Ans. During my early acquaintance with him.
Int. 2. By what means did you learn the particular place of residence of Stark in Portland, in 1858?
Ans. As editor, publisher, and carrier of the Oregon Farmer. I delivered the paper at that house, by his order.
(Above question and answer objected to by pl'ff's att'y, as irrelevant.)

Cross-examination resumed—by Col. Chapman:

Int. 1. You state that during the earlier years of your acquaintance with Benj. Stark, you saw mostly about Couch's? What year or years would that embrace?
Ans. 1851 and 1851.

Examination-in-chief resumed:

369 Int. 1. Why did you meet Mr. Stark in 1850–'51 about Capt. Couch's place of business?

Ans. That being the point at which the most of my business in Portland at that time was transacted.

A. G. WALLING.

4 o'clock p. m., April 28th, parties adjourned to meet at 9 o'clock a. m. of to-morrow, the 29th inst.

9 o'clock a. m., April 29th, 1865, same parties met as per adjournment.

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, def't.

Deposition of W. P. Doland, taken before S. A. Moreland, notary public, to be read in evidence on the trial of the above-entitled cause.

370 Examination-in-chief—by Hon. A. E. Wait, of counsel for def't:

Int. 1. How long have you been acquainted with the def't, Benj. Stark?

Ans. Since August, 1850.

Int. 2. Where has been his home and place of residence since you first became acquainted with him up to the time he went to the United States Senate in 1861?

(All that part of the question that calls for evidence of defendant's residence, since Sept., 1853, the date of his certificate, objected to as irrelevant and immaterial.)

Ans. I think his residence has been all the time in Portland.

Int. 3. Are you acquainted with the Stark tract?

Ans. Somewhat. I am not positive as to its boundaries.

Int. 4. State, if you know, where the defendant boarded at the time you first became acquainted with him?

Ans. At the City Hotel, in Portland; I think between Pine and Oak streets, on First street.

(Question and answer objected to as above.)

Int. 5. State, if you know, where else he boarded or kept house on that tract?

Ans. He kept house on the corner of Ash or Pine and First
371 streets, in this city.

Int. 6. How long do you know of his keeping house there?

Ans. I can't be positive as to that.

Int. 7. State as near as you can.

Ans. I think he was living there in 1853, and lived there until he went to the States, in 1861. That is as early as I know of his residence there.

(Plaintiffs, by their attorney, object to so much of this answer as relates to evidence after September, 1853.)

Int. 8. Do you know of defendant's having an office on the Stark tract during the time of your acquaintance with him?

(Objected to as above.)

Ans. Defendant had an office on Front street, I think, below Stark's, where Cree's buildings now stands, I think, but am not certain about that

Int .9. Do you know of defendant's boarding or residing off from the Stark tract during your acquaintance with him, up to 1861?

(Same objection as above.)

Ans. No.

372 By Col. W. W. Chapman, plaintiffs' attorney:

Int. 1. Is it possible, consistent with your knowledge on the subject, that from your first acquaintance with the defendant up till September, 1853, he should have resided anywhere else than upon the Stark tract?

Ans. It is possible, yet I do not know that he resided elsewhere.

Int. 2. Who kept the City Hotel at the time you refer to, when the defendant boarded there?

Ans. I think, Frank De Witt.

Int. 3. Was that a public hotel, and were there other persons boarding there at the same time?

(Objected to as immaterial.)

Ans. There were other persons boarding there at the time.

Int. 4. State the circumstances and extent of your acquaintance with the defendant at that time.

Ans. There were no circumstances, except a general meeting and conversation on many occasions.

Int. 5. Were you a boarder at the hotel at the same time?

(Objected to as immaterial.)

Ans. Yes.

373 Int. 6. How long did you know the def't to be boarding at that hotel, from the time you first met with him?

Ans. I cannot state any time.

Int. 7. Did you meet the defendant at the table, in the parlor, or in what part of the house?

(Objected to same as above.)

Ans. I met him at the table and in the sitting room.

Int. 8. Was the defendant at that time engaged in any business in Portland? and if so, where and what?

Ans. He told me he was engaged in business and connected with the house of John H. Couch & Co.

(So much of the answer as gives the statement of the defendant objected to by plaintiffs' attorney, as not responsive to the question.)

Int. 9. Was the defendant at that time engaged in any business in Portland? and if so, where and what?

Ans. I can only answer as above.

Int. 10. Where did you reside at the time referred to?

Ans. At the City Hotel, in Portland.

Int. 11. How long had you been residing there?

374 Ans. I don't remember; a very short time.

Int. 12. When did you first see the office to which you have referred, and who was occupying it?

Ans. I can't be positive as to the time. It was occupied by Hamilton and Stark, I think.

Int. 13. How long did you remain a resident of Portland?

Ans. I don't now remember; the time was short.

Int. 14. State as near as you can?

Ans. Possibly ten days.

Int. 15. Where did you then reside? and, if ever, when did you return to Portland as a resident?

Ans. I resided in Wilwaukie. I came to Portland in March, 1856.

Int. 16. At the time referred to, when you first met the defendant, were there any other places of business upon the Stark tract than the City Hotel? and if so, what where they?

Ans. There were other places of business. T. J. Hoffs & Co., general merchandise, and others I don't remember.

Int. 17. Were there at that time any family residences upon that tract, and who occupied them, if you know?

Ans. There were residences, but I don't know who occupied them.

W. P. DOLAND.

375 In the circuit court of the State of Oregon for the county of Multnomah.

A. M. and L. M. STARR, pl'ffs, } In chancery.
vs.
BENJ. STARK, def't. }

Deposition of Hon. A. E. Wait, taken before S. A. Moreland, notary public, at his office, April 28th, 1865, to be read in evidence on the trial of the above-entitled suit, Col. W. W. Chapman appearing for pl'ffs, and Hon. L. F. Grover for defendant.

Examination-in-chief—by Hon. L. F. Grover for defendant:

Int. State how long you have resided in Oregon?

Ans. From September, 1847.

Int. 2. State in what part of Oregon you have chiefly resided?

Ans. My home has been in Oregon City, twelve miles from Portland, most of the time, until the last thirty months, during which time I have resided in Portland.

Int. 3. State what have been your business occupations, and your opportunities of knowing of men and business transactions in

376 the city of Portland?

Ans. I have been a practicing lawyer during my entire residence in Oregon, with the exception of a few months' absence in California, and two or three years that I served upon the bench of the supreme and circuit courts. I have been at the bar or upon the bench in Portland while courts have been held at Portland, and I have been more or less acquainted with the business and business men of Portland from 1847 to the present time.

Int. 4. Are you acquainted with Benj. Stark, def't in this cause? If so, where and when did you first become acquainted with him?

Ans. I am acquainted with him, and first became acquainted with at Oregon City, in the fall of 1847.

Int. 5. Please state what you know of his residence in Oregon from that period to the first of September, 1853, and particularly with reference to the tract in issue in this cause.

(So much of the above question as calls for or admits statements of the residence of the defendant prior to the 10th of September, 1849, and of residence elsewhere than upon the tract in controversy, objected to as irrelevant and immaterial, by plaintiffs' counsel.)

377 Ans. I have a general acquaintance with the Stark tract in the city of Portland. I was not intimately acquainted with Benj. Stark before 1851. Since that time I have been intimately acquainted with him. When I first became acquainted with him he lived at Portland. I have met him in Portland, at the City Hotel, on the Stark tract, where he boarded. I met him at other points in Portland. In the summer of 1852 and in the winter of 1852–'3 I served with him in the legislature. I don't remember that I ever visited him at his house until after his marriage. Since that time I have visited him there often. That house was on the Stark tract. I have always regarded his home and residence, from 1847 to the time that he went to the United States Senate in 1861, at least, as being in Portland, Oregon. I think he resided in 1847 with Pettigrove, at the old "Pettigrove House." I think that he has resided since his return from the States in 1849 upon the Stark tract.

(So much of the above answer as gives the opinions of the witness objected to as incompetent and irrelevant.)

Int. 6. You spoke of the house of Benj. Stark on the Stark tract; when was that house built?

378 Ans. I cannot tell; my business seldom or never called me into that part of town. I think I observed that house as early as 1851, and perhaps sooner.

Int. 7. Was this house occupied? If so, by whom?

Ans. I think it was occupied, but I cannot say of my own knowledge by whom. I have frequently been invited by defendant to call upon him at that house before I did call there. I know that he lived there for some time before I called upon him, but what length of time I cannot state.

Int. 8. State if you know of the defendant's having an office or place of business upon the tract in issue; if so, state when.

Ans. I know he had an office near where Cree's brick building now is. There was a public library in one part of it. There was a bed and bedding in one part of it; there was a lounge, table, and chairs in another part of it, and he occupied it. Afterwards he and Hamilton occupied as a law office a room in what was called the "Canton House." I think I first visited him at the office first mentioned in 1851; perhaps sooner than that, but I am not sure. I think he continued to occupy that office until he went into the "Canton House."

379 Cross-examined by :

Int. 1. When did you first meet the defendant at the City Hotel?

Ans. I cannot say certainly, but I think as early as 1851 ; perhaps in 1850.

Int. 2. Did you meet him at that hotel as a mere boarder, or as having some control or management of the premises?

Ans. I supposed at the time that he was a boarder there ; but I have since learned that he claimed to have an interest in the property.

(The latter part of the answer objected to as incompetent, not responsive to the question, and as a voluntary statement of the witness, by plaintiff's attorney, Col. Chapman.)

Int. 3. You have stated in your answer to the 5th interrogatory that you have always regarded the residence of the defendant, from 1847 to 1861, as being in Portland, Oregon. Do you not know that from September, 1849, till late in 1850 or 1851, he was doing business in San Francisco, California, and resided there?

Ans. I do not know that Benj. Stark resided in San Francisco between the periods mentioned, or at any time. I believe he
380 was interested in business there during a part of that time, but how great a part I can't say ; and that he was also interested in business at Portland, and at New York, at the time. I believe from the sworn and other statements of the defendant and otherwise that San Francisco was not, and that Portland was, his home and residence during that period.

(So much of the above answer as gives the opinions of the witness and refers to the sworn and other statements of the defendant, objected to by plaintiffs' attorney, as not responsive to the question, and as a voluntary statement of the witness.)

Int. 4. If you know, state what time the defendant returned from the States to Oregon in 1849?

Ans. I do not know, but I think he returned in August of that year.

Int. 5. Do you know how long the defendant had been absent from Oregon when he returned in August, 1849?

Ans. I think he had been absent a sufficient length of time to make a trip to China and New York, consuming over one year.

Int. 6. State, if you know, what was his business in Oregon and elsewhere when he left for China.

381 Ans. When he left for China, I think he was an equal owner with Pettigrove of the Portland claim ; that he owned a band of cattle, some horses ; that he was interested in the "Toulon," and went with that vessel as supercargo.

Int. 7. Do you not know that he came to Oregon first as supercargo of that vessel?

Ans. I think he did ; the vessel came before I did.

Int. 8. State whether Benj. Stark did not first in the early part of 1849, after the voyage to which you have referred, stopped in San Francisco, and there opened the house to which you have also re-

ferred, and remain there till the time when you mention that you first saw him in Oregon, in 1849.

Ans. I have not said that I saw him in Oregon in 1849. I do not remember to have seen the defendant in the year 1849. I was in California most of the summer of 1849. I spent several days in San Francisco in the spring and fall of 1849. I did not see the defendant there at any time. I think, from what he and others have told me, that he remained at San Francisco a few days before coming to Oregon in 1849. When the house referred to in the question was established I cannot tell.

382 Int. 9. State what time you went to California in 1849, and what time you returned to Oregon?

Ans. I left Oregon for California in March, 1849, and left California for Oregon in November of the same year.

Int. 10. In your answer to the 5th interrogatory in chief, you state defendant's residence to have been on the Stark tract from his return to Oregon in 1849. What personal knowledge you have of his residence upon that tract from March, 1849, till November of that year?

Ans. No personal knowledge whatever.

Int. 11. Was you at Portland in September, 1848, and did you professionally prepare the tranfer of the Portland land claim from Pettygrove to Lownsdale?

Ans. I was in Portland about that time; I cannot now say whether it was at that time; and professionally I drew a deed of conveyance from Pettygrove to Lownsdale of all that part of the Portland land claim, except the block known as the "Stark block" and such lots as had been previously sold to others.

Int. 12. By the reservation of previously disposed of lots was it intended to exempt Lownsdale from obtaining title from the United States to the whole tract, and making deeds to previously disposed of lots?

383 Ans. My recollection is that Pettigrove wanted Lownsdale to receive a deed for a half interest in the claim, without interfering with any interest of Stark. Lownsdale would not buy the claim unless he could obtain a deed for the whole, with the reservation before referred to, and the deed was so made.

(The above answer objected to, as not responsive to the question, by plaintiffs' attorney.)

Int. 13. By the reservation of previously disposed of lots, was it intended to exempt Lownsdale from obtaining a title from the United States for the whole tract, and making deeds to previously disposed of lots.

(Objected to as irrelevant, immaterial, and calling for what is a matter of law and writing.)

Ans. I don't know that anything was said about the United States government. My recollection is that Lownsdale wanted to record and hold the whole claim in his own name, and that he would make deeds for the Stark block, and for all lots previously sold.

Int. 14. At the time you speak of having seen tables and chairs in an office occupied by defendant, what year was it?

Ans. I am unable to say with certainty. I think it was as
384 early as 1851, and perhaps in 1850.

Int. 15. Was not a man by the name of Sherman at that time acting as Stark's agent and occupying that office?

Ans. I have no distinct recollection of Sherman.

Int. 16. Did not Stark go from California to the States in the latter part of 1850, and not return till some time in 1851?

Ans. I have no personal knowledge of that trip, but I think he went to New York about that time for the purpose of winding up the business of Sherman & Co., and returned hurriedly to Oregon.

Int. 17. What evidence within your knowledge did he leave during this trip of a residence on the Stark tract?

Ans. I think he was making improvements upon it at that time. I think he left it as his home for the sole purpose of transacting that business, with the intention of returning, and that he did return as soon as the business was transacted. I think his principal property was left here in the care of others.

Int. 18. What house was he occupying as a residence when he left, and what house did he occupy when he returned?

385 Ans. I cannot say. I think he boarded at some of the hotels before he left, and that he occupied the office before referred to as his sleeping apartment before he left and after he returned, and I think that about the time of his return he went into the house in which he resided up to the time of his going east about that time kept by Mrs. Tucker.

Direct examination resumed—by Judge W. W. Page, att'y for d'f't:

Int. 1. Was the whole of the transaction that occurred between Pettigrove and Lownsdale, as referred to by you in answers to interrogatories No. 11, 12, and 13 of cross-examination, reduced to writing? If so, was the writing drawn by yourself?

Ans. They told me what paper to draw. I drew it, and it was executed. I don't remember of but one paper, that was the deed, and it will speak for itself. I don't remember of drawing any other instrument from Pettigrove to Lownsdale.

A. E. WAIT.

Twelve and three-fourths o'clock p. m., adjourned for ½ hour.

386 1¼ o'clock p. m., same parties met as before.

In the circuit court of the State of Oregon for the county of Multnomah, *ss:*

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, def't.
} In chancery.

Deposition of Thos. J. Holmes, taken before S. A. Moreland, notary public, to be read in evidence on the trial of the above-entitled suit, Col. Chapman for pl'ffs, and Judge Wait and Judge Page for def't.

Examination-in-chief—by Hon. W. W. Page for def't:

Int. 1. Are you acquainted with the parties to this suit? If so, how long have you known them?

Ans. I am. I have known Mr. Stark since June, 1850, and the Messrs. Starrs ever since they have resided in Portland.

Int. 2. How long have you resided in Portland? State your name and age.

Ans. My name is Thos. J. Holmes; age, 46 years. I have
387 resided in Portland since August, 1850.

Int. 3. State where the defendant, Benj. Stark, has resided since you have known him?

Ans. In Portland until within the last year or two, more or less.

(All the above question and answer relative to the residence of the defendant since September, 1853, objected to by plaintiffs' attorney as irrelevant and immaterial.)

Int. 4. State what improvements, if any, the defendant has made upon his donation claim, and the value thereof.

(Objected to as irrelevant.)

Ans. I don't know that I can state all the improvement that Mr. Stark has made upon his claim. I can name two brick buildings, erected, I suppose, at not less cost than $20,000. Also a number of frame buildings, at a cost, perhaps, of from four to six thousand dollars. There are also two blocks fenced in and improved; dwelling house erected on one of them. I can't say at this time at whose cost those building were erected. And several lots and parcels of ground have been improved by fencing, dwellings, &c. This is all that occurs to my mind at this time.

388 Int. 5. When you speak of the defendant residing in Portland since you have known him until within a year or two past, more or less, state whether the more or less refers to the year or two past, or what you mean by the more or less.

Ans. Upon second thought as to time, I positively state that more or less referred to not to mean more than two years from this spring.

(All that part of the answer refering to the acts and residence of the defendant since September 1st, 1853, objected to as irrelevant and immaterial.)

Cross-examined by Col. W. W. Chapman for plaintiffs:

Int. 1. You say you became · with the defendant, Benj. Stark, in June, 1850. Where did you make that acquaintance?

Ans. In answer to the former question I stated that I had known Mr. Stark since June, 1850. I ought to have there answered May instead of June of that year, in which month I first become with Mr. Benj. Stark, in the city of San Francisco, California.

389 Int. 2. If you know, state what business he was engaged in in San Francisco.

Ans. I have no means of knowing otherwise than by inference drawn from his remarks made to me at the time, which were that he was stopping there a short time in San Francisco previous to returning home to Oregon, and proposing to bring messages and letters to my wife here for me, and by the tenor of his remarks I supposed he was only a sojourner for the time being.

No. 1. (So much of the above answer as gives the statement of Benj. Stark are objected to, because they are the voluntary statements of the witness, not responsive to the question, and were insisted to be made by defendant's counsel after the plaintiffs' counsel had suggested another question, and protesting against such answer.)

No. 2. (Defendant's counsel did not insist upon anything excepting a full answer as proffered by the witness before the propounding of another question.)

Statement No. 1 by counsel for pl'ffs.

Statement No. 2 by counsel for def't.

S. A. MORELAND, *Notary Public.*

390 Int. 2. How long did you remain at San Francisco after you became acquainted with Benj. Stark?

Ans. Less than two months.

Int. 3. How much less than two months?

Ans. Perhaps two weeks.

Int. 4. Did you see the defendant frequently during your stay there after you first met him?

Ans. I think not over three times altogether, including our first meeting.

Int. 5. Did you see him shortly before you left?

Ans. I saw Mr. Stark in San Francisco for the last time on the same day that he left that city for Portland, Oregon, which was in the latter part of the month of June, 1850.

Int. 6. Do you know what vessel he came to Oregon upon at that time? If so, state.

Ans. I do. He came up on the steamer Caroline or Carolina.

Int. 7. Did you see the steamer on her return to San Francisco about the first day of July?

Ans. I think I did.

Int. 8. Did not Benj. Stark return to California upon that same steamer?

Ans. No, sir, he did not.

Int. 9. Are you positive of that fact?

Ans. I certainly feel so, or I would not have given the former answer.

391 Int. 10. Did you see the correspondence with the city council of San Francisco respecting the raising the liberty pole on the 4th of July of that year?

(Objected to by def't's counsel as immaterial, and as not the best evidence.)

Ans. I can't say whether I did or not; I can't whether or not there was any.

Int. 11. When did your family come to Portland?

Ans. My wife arrived in Portland in April. 1850, and myself at a time stated in a former answer, (August, 1850.)

Int. 12. Did you find Benj. Stark in Portland on your arrival in August, 1850?

Ans. If that question alludes as to the day of my arrival, I decline to say whether I met him or not on that day, for I cannot; but I remember having an interview with him shortly after my arrival in this place. I have no doubt in my mind but that he was here, and I believe he was.

Int. 13. How long did he remain after that time until he left for California or elsewhere?

Ans. I think some twelve or thirteen years before he changed his residence, yet during that time he has been absent from the State on several occasions. I cannot state the time when he first left

392 after my arrival at this place.

(The above answer objected to by plaintiffs' attorney as evasive and not responsive to the question.)

Int. 14. Do you not know that in the fall of 1850 Benj. Stark left Portland for California and the States, and did not return until 1857?

Ans. I do not. As I stated before, I do not remember the time of his first leaving Oregon after my arrival here.

Int. 15 Might he not have thus gone to California and the States, consistent with your present recollection on the subject?

Ans. Mr. Stark may have left Oregon some time in the fall of 1850, but if he had done so I think I should have remembered it, being here at the time, and that at present I cannot state anything more definite than I have done as to the time of his absence to the States.

Int. 16. You state that Benj. Stark has resided in Portland since you have known him till within a short time. Can you state any particular residence he had in Portland between the times you saw him in August, 1850, and September, 1853?

393 Ans. I cannot definitely state any particular residence until after he was married. By any particular residence I mean any particular house.

Int. 17. Are you acquainted with what is known as the Stark tract as a place of trade and business in 1850, about the time of your in Portland? and if so, state to what extent, if at all, it was occupied arrival.

(Objected to as immaterial by def't's counsel.)

Ans. I am acquainted with the Stark tract. At the time of my arrival there were a few small buildings erected upon it, perhaps 4 or 5; but I remember one building being occupied as a place of merchandising. I only answer as memory serves me in regard to these things.

Direct examination resumed—by Judge Wait for defendant:

Int. 1. What do you know about the defendant's having an office on the Stark tract, and when?

Ans. I know that he had an office there, but as to the particular time of its erection I cannot state.

Int. 2. Was it not erected before you came here?

394 (Objected to as leading by plaintiff's attorney.)

Ans. It may or may not have been. I have no recollection about its being erected. I know it was there at an early day.

Int. 3. State what length of time the defendant occupied that office.

Ans. I think he occupied it two or three years, or it may be four years.

Int. 4. Did you ever hear of the plaintiff's claiming any part of the Stark tract under the town site law?

Ans. I don't know whether I have or not as to that particular tract, but I distinctly remember at the time the town site law was rife in this community the position taken by Mr. Starr on that subject.

Int. 5. State, if you know, where the defendant slept after your arrival in Oregon up to the time of his marriage?

(Objected to by plaintiffs' counsel because the examination-in-chief has once closed.)

Ans. I believe he slept at one time in a house of Frank De Witt on the Stark tract, and I further believe that he slept in a portion of the office spoken of.

Int. 6. Do you know where he got his meals after you ar-

395 rived in Oregon, before he married?

Ans. I cannot state the party that he boarded with. I think in the latter part of 1850 or '51 he boarded with some party down on the Stark tract, and then he boarded at the Warren House.

Int. 7. Do you remember of his living in the house kept by Mrs. Col. Tucker, where he lived after his marriage? and if so, how long do you know of his living there before his marriage?

Ans. I remember of his boarding there with that party, but can't state the time, only that it was before his marriage.

Cross-examination resumed—by Chapman for pl'ff:

Int. 1. Upon what facts, within your own knowledge, do you base your belief that Stark slept in that office?

Ans. From the fact that I distinctly remember seeing bedding and blankets there in such shape as they are commonly used at that time. From that fact I inferred that he slept there, and give my answer accordingly.

Int. 2. Did you know young Sherman, some way connected with Benj. Stark? If so, did he not occupy that office, and part
396 of the time did not Alexander Campbell occupy it with Sherman?

Ans. I knew young Sherman. Saw him frequently in the office alluded to. The time that Campbell and Sherman occupied it was at a latter date, subsequent to 1850.

Int. 3. Was there ever a time to your knowledge from the time of its erection to the time that you saw Campbell and Sherman occupy it, when Sherman did not occupy it?

Ans. I never did regard at any time Sherman as the occupant of the office, any more than a merchant's clerk would be the occupant of his store.

Int. 4. Can you say that Sherman did not sleep there regulary from the time of his being in any way connected with that building till the time that you saw him and Campbell in some manner using it?

Ans. I can't say whether Sherman slept there regularly or not. He might have done so for aught that I know to the contrary. And I don't know whether he slept there at all.

Int. 5. Is it not possible that the bed which you took for Ben. Stark's bed, was that of Sherman?

397 Ans. It is possible.

Int. 6. Upon what facts do you base the belief you have stated that Ben. Stark slept at De Witt's?

Ans. I stated that as a matter of belief and memory, subject to be corrected if I am mistaken.

Int. 7. Do you mean by memory that you recollect and know the fact that he did so sleep?

Ans. I do not mean any such thing. If I had, I should have stated not as a memory, but as a matter of fact.

THOS. J. HOLMES.

In the circuit court of the State of Oregon for the county of Multnomah, in chancery.

A. M. and L. M. STARR, pl'ffs,
vs.
BENJ. STARK, def't.

Deposition of Sherbrick Norris, taken to be read on the trial of the above-entitled suit.

Examined in chief by Judge A. E. Wait for def't:

398 Int. 1. How long have you been acquainted with the def't, Benj. Stark?

Ans. I have known him since the spring of 1850.

Int. 2. Where have you resided since the spring of 1850?

Ans. Portland, Oregon.

Int. 3. Where has been the defendant's home and place of residence during the time that you have been acquainted with him, as far as you are able to determine it, up to the time of his going to the United States Senate in 1861?

(So much of the foregoing question as calls for evidence of defendant's residence since the first of September, 1853, objected to by plaintiffs' counsel as irrelevant.)

Ans. The first I knew of Stark being in Oregon, was in May or June, 1850. He remained here a month or two, or perhaps more. I don't recollect of seeing him here again until the following summer. I think since that time he has resided here in Portland most of the time.

Int. 4. State, if you know, what place the defendant has regarded his home and residence since 1846 or '47.

(So much of the question as calls for evidence of def't's resi-
399 dence prior to the first of September, 1849, and after the first of September, 1853, objected to as irrelevant, and the whole question objected to as calling for defendant's statements.)

Ans. I cannot answer. I don't know.

Int. 5. State, if you know, what place the defendant has regarded as his home and place of residence since the time of your first acquaintance with him.

(Objected to as above.)

Ans. He has regarded Oregon as his home since 1852, to the best of my knowledge. I can't go beyond that time.

Int. 6. State, if you know, whether or not the def't was a proprietor of a part of the city of Portland when you first became acquainted with him; and if so, of what part?

(Objected to as immaterial.)

Ans. About the time I became acquainted with him, he exercised ownership over that portion of the town lying between Stark street and Couch's addition, except some lots which I think had been previously sold.

Int. 7. State, if you know, whether the defendant had an office on the Stark tract when you arrived in Portland.

400 Ans. He had not.

Int. How soon did he build an office on that tract after your arrival?

Ans. I think it was in June of the same summer.

Int. 9. State, if you know, whether the tract of land over which the defendant exercised acts of ownership was held by him as a claimant under the provisional government laws or otherwise.

(Objected to as immaterial.)

Ans. I do not know. I understood it was held under the laws of Congress.

Int. 10. Do you know where the defendant slept after the erection of his office while in Oregon in 1850–'51?

Ans. I do not.

Int. 11. State, if you know, whether the defendant was a member of the legislature from the county of Washington, of which Portland was a part in the summer of 1852 and in the winter of 1852–'3.

(Same objection as above.)

Ans. Stark was elected a member of the legislature from Washington county, of which Portland was a part, in the spring of 1852.

401 Int. 12. Where did he reside at the time he was so elected? (Same objection as above.)

Ans. Portland, Oregon.

Int. 11. Do you remember of his candidate for nomination for the same office in the summer of 1851?

(Same objection as above.)

Ans. I do not.

Int. 12. Do you remember of his living in one of the square houses on block 28, and having Mrs. Major Tucker as a housekeeper? If so, when?

Ans. I can't remember the dates. To the best of my recollection it was in 1852.

Int. 13. Was it before or after he was a member of the legislature, or both?

Ans. I think it was about the same time. It might have been before or it might have been after.

Int. 14. Was there any boarding-house on the Couch claim in 1850–'51?

Ans. Not that I remember of.

Cross-examination—by Col. W. W. Chapman for plaintiffs.

Int. 1. In your answer to the 6th interrogatory you say Stark
402 exercised ownership over, &c., except some lots that had been previously sold? State, if you can, who were then occupying lots of that description.

(Objected to as immaterial by def't's att'y.)

Ans. A man by the name of Warren, and another by the name of Hobbs.

Int. 2. From the time that you arrived in Portland till the time that Stark arrived, what was the nature and extent of the occupancy of what is now known as the Stark tract.

Ans. It was very limited

Int. 3. Was there any trade and commerce carried on upon that tract?

(Objected to as leading and immaterial.)

Ans. There was one store there when I came here.

Int. 4. Did you open a store upon that tract? and if so, when?

(Same objection as above.)

Ans. I did, sometime in the summer of 1850.

Int. 5. At that time if Ben. Stark had had a residence upon that tract, would you have been likely to have known it?

(Objected to as leading.)

Ans. I would; although he might have boarded there, and I not known it.

403 Int. 6. Did you not arrive in Portland early in April, 1850?

Ans. I arrived in Portland on the tenth day of April, 1850.

Int. 7. State, if you can, whether the def't, Stark, did not come to Oregon on the Carolina in June, and return to California upon the same steamer?

Ans. Stark arrived here the last of May or some time in June on

the steamer Carolina, remained here a month, or perhaps two, and left here for California; on what vessel I do not know.

Int. 8. How long had you been in San Francisco before you came to Oregon?

Ans. Some 8 months.

Int. 9. Did you know anything of a house there of Stark & Co.?

(Objected to as immaterial.)

Ans. I did.

Int. 10. What did you know of the def't's connexion with that house?

(Same objection as above.)

Ans. He was a member of the firm of Stark & Co.

Int. 11. State, if you know, how long that house continued.

(Objected to as immaterial.)

Ans. I don't know.

404 Int. 12. State, if you know, who first occupied the office below Stark street referred to, and how long that occupancy continued.

Ans. A man by the name of Sherman first occupied it; he might have occupied it a year, and it might have been two years; I don't remember.

Int. 13. State, if you know, what improvements were made upon block 81, in Portland, during the summer, fall, or winter of 1850, and who occupied it.

(Objected to as immaterial.)

Ans. There was a house built there during the summer or fall of 1850, and occupied by A. M. and L. M. Starr as a tin shop.

Int. 14. State, if you know, what other improvements were made upon that block in 1851, and by whom.

(Objected to as immaterial.)

Ans. I built a warehouse there in 1851; there might have been others; I don't remember.

Int. 15. State what lot that was on.

(Objected to as above.)

Ans. On the north end of the block; I don't remember the lot.

Int. 16. State, as far as you know, what improvements the

405 plaintiffs, Starrs, have made upon that block.

(Objected to as above,)

Ans. They have built some two or more frame buildings on the block.

Int. 17. In knowing the house of Stark & Co. in San Francisco, what did you know of him then as doing business or residing there?

Ans. I knew him there doing business previous to my coming to Oregon; I knew nothing of his residence there.

Direct exam.:

Int. 1. Where did you board in Portland in 1850 and '51?

Ans. I boarded at the widow Epperson in the summer of 1850, between Stark and Washington streets; I afterwards boarded at a restaurant somewhere in the neighborhood of Morrison street; in 1851 boarded at De Witt's, on the Stark tract.

Int. 2. Did the defendant board at either of these places while you boarded there?

Ans. My impression is that he ate at De Witt's while I was boarding there, but I am not positive.

Int. 3. State, if you know, under whom or by what tenure the plaintiffs claim to hold block 81.

406 Ans. Part of it, I think, through W. W. Chapman; the balance I don't know who; I am not positive.

Int. 4. State, if you know, whether they claim to hold those lots as purchasers of town lots, under Chapman and others, or otherwise.

Ans. My understanding is that they purchased them, and claim to hold them as town lots, under their purchase from the town proprietors.

Int. 5. Don't you know that the defendant has been a resident of Portland longer than since 1852?

Ans. I know that he has been a resident here most of the time since the summer of 1851.

Int. 6. Do you know that he has not been a resident of Portland, Oregon, since 1847?

Ans. I do not.

Cross-examination resumed—by Col. W. W. Chapman for pl'ffs:

Int. 1. From your knowledge of Portland, and the residents and business on the Stark tract, was he, to your knowledge, a resident of that tract, having a place of residence thereon and residing therein prior to the year 1852?

Ans. I cannot state positive; my impression is that in the fall of 1851 he had a residence on the Stark claim and resided there.

407 Int. 2. Was you in San Francisco in the summer or fall of 1850? and if so, what did you know of Benj. Stark there then?

(Objected to as immaterial.)

Ans. I was in San Francisco in the fall of 1850, and knew of Stark's leaving San Francisco for the Atlantic States.

Int. 3. From your early knowledge of Stark in Portland in 1851, had he any place of business or was he connected with any house? and if so, when? Where was it?

Ans. He was connected with the firm of Couch & Co. in the mercantile business, situated on Couch's claim.

Direct examination resumed—by Judge Wait for def't:

Int. 1. State where he slept and boarded during that time.

Ans. My impression is that he slept in an office on Front street, between Stark and Oak streets, and he ate at the City Hotel.

SHUBRICK NORRIS.

408 6 o'clock p. m. Saturday, April 29, adjourned till Monday May the 1st at 9 a. m.

Monday, May 1st, 1865, parties appeared by their attorneys as before. No witnesses being present, parties adjourned.

In the circuit court of the State of Oregon for the county of Multnomah, *ss:*

A. M. and L. M. STARR, plaintiffs,
vs.
BENJ. STARK, defendant.
} In chancery.

I, S. A. Moreland, a notary public for the State of Oregon, in Multnomah county, do hereby certify that the annexed depositions of M. P. Deady, E. Hamilton, O. Risley, R. Wilcox, A. G. Walling, W. P. Doland, Aaron E. Wait, Tho's J. Holmes, and Shubrick Norris, witnesses produced on part of the defendant in the above-entitled suit, were taken before me, pursuant to the notice hereto at-
409 tached, at my office in the city of Portland, in said county and State, on the 28th and 29th days of April, A. D. 1865, between the hours of 9 o'clock a. m. and 5 o'clock p. m. of said days, and reduced to writing by myself. And I further certify that before proceeding to the examination, the witnesses were each sworn to tell the truth, the whole truth, and nothing but the truth; and the deposition of each witness was read to him, and then by him subscribed.

In testimony whereof, I have set my hand and affixed my notarial seal, this the first day of May, A. D. 1865.

[L. S.]

S. A. MORELAND,
Notary Public, State of Oregon.

[U. S. revenue stamp, 5 cts.]

410 On the foregoing is the following indorsement:

In circuit court. A. M. and L. M. Starr *vs.* Benj. Stark. May 3, 1865, first filed.

In open court opened and filed May 9th, 1865.

H. C. COULSON, *Cl'k.*

Notarial fees:

128 folios	$32 00
9 witnesses sworn	2 25
1 cert. with seal	1 00
	35 25

No. 36. Filed in the supreme court Sept. 2, 1865.

R. WILLIAMS, *Clerk.*

411 *No.* 328.—*Notification.*

To the surveyor general of Oregon, on the settlement of public land in township numbered 1 N., range 1 E.:

Pursuant to the act of Congress approved on the 27th day of September, 1850, entiled "An act to create the office of surveyor general of public lands in Oregon, and to provide for the survey, and make donations to the settlers of the public lands"—

I, Benjamin Stark, of Washington county, in the Territory of Oregon, hereby give notice of my claim to donation of 320 a's of land, known and designated in the surveys and plats of the United States as a part of sec's 33 and 34, T. 1 N., R. 1 E.; a part of sec. 3, T. 1 S., R. 1 E., particularly bounded and described as follows: beginning at a point 1.15 chains east of a point bearing N. 12°45′ E., and 17.15 chains from the intersection of the base line with the west bank of Willamette river, running thence west 54.65 chains along Couch's line, S. 70° E. 52.00 chains to base line, and 15 links west of the meander post on the west bank of the Willamette
412 river in base line, thence S. 70° E. 1.00 to the water line of Willamette river, thence N. easterly along the meanders of said river to the place of beginning, as appears by the annexed survey, marked 328.

(Signed) BENJ. STARK.

Filed May 9th, 1865.

H. C. COULSON, *Clerk.*

413 "328."

Description of Benjamin Stark's claim, in the town of Portland, Oregon Territory.

Benjamin Stark claims 48 acres, 1 rood, 00 poles, bounded as follows, viz: commencing from a stake, M on plan, top of bank, 1.15 chains W. of water line Willamette river, of which is witness an oak tree 10 ins. diam., distant 37 links W. 26° S., (said stake being 17.15 chains N. 12° 85 E. from a stake on the base line—government survey—top of bank above river, and marked $\frac{S.}{3}$ $\frac{S.}{34}$) and from which, bearing distant 66 links, corner of store (Birdseye's) $\frac{R. 1 E.}{}$ $\frac{R. 1 E.}{}$ marked T. 1 S., also bearing an oak tree, marked T. 1 N. $\frac{S. 3}{}$ $\frac{S. 34}{}$ Thence running W. at 35.50 chas. a corner stake, on plan, of which are witnesses a white fir, one foot diam., distant 35 links N. 26° 30′ E., also a white fir, 2 feet diam., distant 32 links S. 8°30′ E., also a white fir, 30 ins. diam., distant 30 links W. 12° 30 N. Thence running E. 20° 00 S., at 52.00 chas. cut surveyor general's B. L. 15 links W. of stake before mentioned, marked $\frac{S.}{3}$ and $\frac{S.}{34}$, at 52.00 chas., stake on plan, at edge of water Willamette river; thence

following the meanderings of water line northwards to a stake 1.15 chs. E. of stake, place of beginning. Easterly variation 19° 30′.

414 Surveyed March 1852, by—

(Signed) JOSEPH W. BUCHTEL.

Filed May 9, 1865.

H. C. COULSON, *Clerk*.

415 No. 88.

Daniel H. Lownsdale, of Washington county, Oregon, says that he desires to change the boundaries of the land claimed by him as a donation right in T. 1 N., R. 1 E. and in T. 1 S., R. 1 E., described in notification 88 to the surveyor general of Oregon, so as to adjust a conflict of boundary with Benj. Stark; that he relinquishes all that portion of land claimed by and described in Benjamin Stark's notification No. "328," being all of Portland claim north of Stark street.

(Signed) D. H. LOWNSDALE.

Rec'd 12th Aug., 1853.

Filed May 9, 1865.

H. C. COULSON, *Clerk*.

416 *Affidavit of settler.—No.* 328.

Benjamin Stark, of Washington county, in the Territory of Oregon, being first duly sworn, says that he is a white settler on public lands in Oregon, and was a resident thereof on and before the first day of December, 1850, and above the age of eighteen years on the first day of December, 1850; that he is a native born citizen of the United States, and that he was born in New Orleans in the year 1820, and that he has personally resided on and cultivated that part of the public lands in Oregon particularly described in notification No. 328, hereunto annexed, continuously from the first day of September, 1849, to the 1st day of May, 1852.

(Signed) BENJ. STARK.

Subscribed and sworn before me this 1st day of May, 1852, at Oregon City.

(Signed) JNO. B. PRESTON,
Surv. Gen'l of Oregon.

Filed May 9, 1865.

H. C. COULSON, *Cl'k*.

417 No. 328.

John H. Couch, of Washington county, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by Benjamin Stark, and particularly described in notifiation No. 328 hereunto annexed; that he is personally acquainted with said Benjamin Stark, and knows that

he has personally resided upon and cultivated said tract or tracts of land 1st day of October, 1849, to the 8th

(Signed) JNO. H. COUCH.

Subscribed and sworn before me this 8 day of Sept., 1852, at Oregon City.

(Signed) JNO. B. PRESTON,
Sur. Gen'l of Oregon.

418 No. 328.

William W. Buck, of Clackamas county, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by Benjamin Stark, and particularly described in notification No. 328 hereunto annexed; that he is personally acquainted with said Benjamin Stark, and knows that he personally resided upon and cultivated said tract or tracts of land on the 1st day of September, 1849.

(Signed) WM. W. BUCK.

Subscribed and sworn before me this 30th day of Dec'r, 1862, at Oregon City.

(Signed) JNO. B. PRESTON,
Sur. Gen'l of Oregon.

Filed May 9, 1865.

H. C. COULSON, *Clerk.*

419 No. 328.

Wm. W. Buck, of Clackamas county, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by Benjamin Stark, and particularly described in notification No. 228 hereunto annexed; that he is personally acquainted with said Benjamin Stark, and knows that he has personally resided upon said tract or tracts of land continuously from the 1st day of August, 1849, to the 27th day of August, 1853.

(Signed) WM. W. BUCK.

Subscribed and sworn before me this 27 day of August, 1853, at Oregon City.

(Signed) JNO. B. PRESTON,
Sur. Gen'l of Oregon.

420 No. 328.

Robert N. McLaren, of Washington county, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by Benjamin Stark, and particularly described in notification No. 328 hereunto annexed; that he is personally acquainted with said Benjamin Stark, and knows

that he has personally resided upon and cultivated said tract or tracts of land continuously from the 1st day of August, 1851, to the 27 day of August, 1853.

(Signed) R. N. McLAREN.

Subscribed and sworn before me this 27 day of August, 1853, at Oregon City.

(Signed) JNO. B. PRESTON,
Sur. Gen'l of Oregon.

Filed May 9, 1865.

H. C. COULSON, *Clerk.*

421 *No.* 328.—*Affidavit of settler.*

Benjamin Stark, of Multnomah county, in the Territory of Oregon, being first duly sworn, says that he is a white settler or public lands in Oregon, and was a resident thereof on and before the first day of December, 1850, and above the age of 18 years on the first day of December, 1850; native born citizen of the United States of America, and that he was born in New Orleans in the year 1820; that he has personally resided upon and cultivated that part of the public lands in Oregon particularly described in notification No. 328, hereunto annexed, continuously from the 1st day of September, 1849, to the 23d day of February, 1855.

(Signed) BENJ. STARK.

Subscribed and sworn before me this 23d day of February, 1855, at Oregon City.

(Signed) R. WILCOX, *Register.*

Filed May 9, 1865.

H. C. COULSON, *Clerk.*

422 No. 328.

John H. Couch, of Washington county, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by Benjamin Stark, and particularly described in notification No. 328 hereunto annexed; that he is personally acquainted with said Benjamin Stark, and knows that he has personally resided upon and cultivated said tract or tracts of land continuously from the 1st day of September, 1849, to the 10th day of September, 1853.

(Signed) JOHN H. COUCH.

Subscribed and sworn before me this 10 day of September, 1853, at Oregon City.

(Signed) JNO. B. PRESTON,
Sur. Gen'l of Oregon.

423 No. 328.

William H. Bennett, of Washington county, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by Benjamin Stark, and particularly described in notification No. 328 hereunto annexed; that he is personally acquainted with said Benjamin Stark, and knows that he has personally resided upon and cultivated said tract or tracts of land continuously from the first day of September, 1849, to the 10th day of September, 1853.

(Signed W. H. BENNETT.

Subscribed and sworn before me the 10 day of September, 1863, at Oregon City.

(Signed) JNO. B. PRESTON,
Sur. Gen'l of Oregon.

Filed May 9, 1865.

H. C. COULSON, *Clerk.*

424 *Oregon.—Donation certificate No.* 69.—*Notification.—No.* 328.

Whereas, in conformity with the provisions of the 7th section of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to settlers of the public lands," Benjamin Stark, of the county of Washington, in the said Territory, claiming a donation right in virtue of the act aforesaid to the following tract of public lands, known and designated in the surveys and plots of the United States as the claim No. 45, being parts of sec's 33 and 34, T. 1 N., R. 1 E., and claim No. 47, being part of sec. 3, T. 1 S., R. 1 E., particularly bounded and described as follows: beginning at a point 16.34 chains north of SW. corner of section 34, T. 1 N., R. 1 E.; thence S. 70° 15′ E. 47.25 chains; thence N. 4° E. 0.37 chains; thence N. 25° E. 5.43 chains; thence N. 4° E. 6.52 chains; thence N. 11° E. 5.42 chains; thence N. 89° 70′ W. 53.57 chains; thence S. 70° 15′ E. 5.64 chains, to the
425 place of beginning, containing 48.02 acres, having proven to the satisfaction of the surveyor general of Oregon the fact that such settlement was commenced on the 1st day of September, 1849, four years prior to the date hereof, and having in pursuance of the requirements of the 7th section of the act aforesaid established by two disinterested witnesses the fact of continued residence and cultivation required by the 4th section of the said act:

Now, therefore, be it known that I, John B. Preston, surveyor general of public land in Oregon, do hereby, and pursuant to the 7th section of the act aforesaid, certify to the Commissioner of the General Land Office the facts aforesaid, accompanied by the evidence thereof, in order that a patent may be issued to said claimant for the tract of land described as required by the 7th section of the act afore-

said; provided the said commissioner shall find no valid objection thereto.

Given under my hand at the office of the surveyor general of public lands in Oregon, this tenth day of September, 1853.

(Signed) JNO. B. PRESTON,
Surveyor General of Public Lands in Oregon.

426 LAND OFFICE AT OREGON CITY, *March 3d*, 1865, *ss:*

I, Wm. A. Starkweather, register of the land office aforesaid, do hereby certify that I have carefully compared the within and foregoing papers with the notification of Benjamin Stark to the surveyor general of Oregon, No. 328, and proof pertaining thereto, and the donation certificate issued to said Benjamin Stark remaining on file in this office, and find them to be correct transcripts therefrom and of the whole of said papers.

WM. A. STARKWEATHER,
Register as aforesaid.

2. In circuit court. A. M. and L. M. Starr *vs*. Benj. Stark.

Filed May 9, 1865.

H. C. COULSON, *Clerk.*

(9 exhibits.)

No. 36. Filed in the supreme court September 2, 1865.

R. WILLIAMS, *Clerk.*

427 At a supreme court begun and held at the court-room in the city of Salem, in and for the State of Oregon, on Monday, the fourth day of September, in the year one thousand eight hundred and sixty-five, before the Hons. P. P. Prim, chief justice, R. P. Boise, R. E. Stratton, E. D. Shattuck, and J. G. Wilson, associate justices, the following proceedings were had:

SATURDAY, *the twenty-fourth day.*

A. M. and L. M. STARR, respondents,
vs.
BENJAMIN STARK, appellant. } Multnomah.

This day came A. E. Wait, esq., and Wm. Strong, esq., of counsel for appellant, and W. W. Chapman, of counsel for respondents, and this cause comes on to be heard upon the complaint, answer, replication, exhibits, and proofs; and the said counsel having duly argued the cause upon both sides, the court, after duly considering thereof, finds that the equities of the case are with the respondents, and
428 that the prayer of their said complaint should be allowed. It is therefore ordered, adjudged, and decreed that the judgment and decree herein in the court below rendered, be, in all things, affirmed. It is further ordered, adjudged, and decreed, that the patent under which it is alleged the appellant claims title to the premises in dispute, dated the eighth of December, 1860, copy of which

is exhibited with the complaint, be, and the same is hereby declared as against the respondents void and to be taken for naught, and that the appellants and all others claiming under him, be and they are hereby perpetually enjoined and prohibited from ejecting and turning out, and from commencing any suit to eject and turn the respondents, their heirs or assigns, out of possession of the parcels of land described in the complaint, being lots number one (1,) two (2,) and four (4,) in block number eighty-one, (81,) in the city of Portland, Multnomah county, Oregon, as known and designated on the map of said city, or any part thereof. And that the respondents have and recover of and against the ap-
429 pellant, and of and against William Cree, surety in appeal, the sum of two hundred and eighty dollars and seventy cents, costs and disbursements in the court below, and the further sum of twenty-nine and $\frac{50}{100}$ dollars, costs and disbursements in this court allowed, and that the cause be remanded to the court below for further proceedings herein, as by law provided and in accordance with this decree.

430 STATE OF OREGON, *County of Marion, ss:*

I, R. Williams, clerk of the supreme court of the State of Oregon, do hereby certify that I have compared the foregoing transcript with the originals, and that it is a correct transcript thereof, and of the whole of such original subpœna for and notice to take depositions of Josiah Failing, S. Coffin, William Warren, Sherry Ross, F. De Witt, and A. M. Starr, together with the depositions of F. De Witt, Sherry Ross, Stephen Coffin, and Josiah Failing, and the certificate of H. C. Coulson, county clerk of Multnomah county, attached thereto; subpœna for as also notice to take depositions of A. B. Hallock, Shubrick Norris, Wm. M. King, W. H. Bennet, William Warren, Thos. Stephens, and W. S. Caldwell, together with the depositions of W. S. Caldwell and A. B. Hallock, and the certificate of H. C. Coulson, county clerk of Multnomah county, attached; subpœna for Wm. M. King, Geo. H. Flanders, and W. Warren; also notice to take deposition of Wm. M. King, Geo. H. Flanders, William Warren, Shubrick Norris, William M. McMillen, and W. W. Chapman, together
431 with the depositions of Geo. H. Flanders, and William M. King, and certificate of H. C. Coulson, county clerk of Multnomah county, Oregon; subpœna for Wm. Warren, (of Umpqua) also notice to take deposition of A. Holbrook, S. Norris, A. B. Hallock, A. Stewart, F. De witt, W. Warren, A. M. Starr, W. W. Chapman, J. L. Parrish, R. Wiley, T. Stephens, and Thos. H. Smith, together with the depositions of F. De Witt, A. Holbrook, A. B. Hallock, and William Warren, and the certificate thereto attached of H. C. Coulson, county clerk of Multnomah county, Oregon; affidavit of W. W. Chapman in the matter of taking deposition of J. L. Parrish on short notice; also order made by Erasmus D. Shattuck, judge, to take deposition of J. L. Parrish on short notice; together with deposition of J. L. Parrish, and certificate of H. C. Coulson, county clerk of Multnomah county, Oregon, thereto attached; depositions of A. L. Lovejoy,

John G. Campbell, Daniel Harvey, W. W. Buck, and H. S. Buck, and certificate thereto attached of J. M. Bacon, county clerk of Clackamas county, Oregon; notice to take depositions of M. P.
432 Deady, Thomas J. Holmes, Edward Hamilton, Wm. P. Doland, Shubrick Norris, Joseph Jeffers, Orville Risley, James Tewilleger, Albert Walling, Ralph Wilcox, Thomas Stephens, Reub. Mendenhall, and Aaron E. Wait, together with the depositions of M. P. Deady, E. Hamilton, O. Risley, R. Wilcox, A. G. Walling, W. P. Doland, A. E. Wait, Thos. J. Holmes, and Shubrick Norris, and certificate thereto attached of S. A. Moreland, notary public; notice to take depositions of John H. Couch, Wm. S. Ogden, Wm. E. Molthrop, Peter G. Stewart, James B. Stephens, James D. Holman, and William H. Bennet, together with depositions of W. H. Bennett, W. E. Molthrop, John H. Couch, James B. Stephens, Wm. Seton Ogden, J. D. Holman, and P. G. Stewart, and certificate thereto attached of S. A. Moreland, notary public; copies of power of attorney, and deeds, seven papers, and certificate thereto attached of H. C. Coulson, county clerk of Multnomah county, filed by plaintiffs in the court below; copies of notifications, &c., nine papers marked "9 exhibits," and certificate thereto attached of Wm. A. Starkweather, register of the
433 land office at Oregon City, filed by defendant in the court below; transcript of the whole of the original pleadings, exhibits, journal entries, orders, and decrees in and from the court below, and certificate thereto attached of H. C. Coulson, clerk; journal entries, orders, and decree of the supreme court of the State of Oregon, as the same appear of record and on file in my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of the supreme court of the State of Oregon, this 7th day of November, A. D. 1865.

[SEAL.] R. WILLIAMS,
Clerk of the Supreme Court of the State of Oregon.

434 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the supreme court of the State of Oregon, greeting:

Because in the record and proceedings, as also in the rendition of a judgment and decree in a plea which is in said supreme court before the judges of said supreme court, between Addison M. Starr and Lewis M. Starr, plaintiffs, and Benjamin Stark, defendant, a manifest error hath happened to the great damage of the said Benjamin Stark, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may

435 cause further to be done therein to correct that error what of right and according to law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 4th day of October, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

In testimony whereof, I, Ralph Wilcox, clerk of the circuit court of the United States for the district of Oregon have, on the day and year last aforesaid, at the city of Portland, in the State of Oregon, hereunto set my hand and the seal of said court.

[SEAL.] RALPH WILCOX, *Clerk*.

Fees, $2 40, paid by plaintiff in error.

Filed in my office, Oct. 6, 1865.

R. WILLIAMS, *Clerk Sup. Court, Oregon*.

436 UNITED STATES OF AMERICA, *ss:*

To Addison M. Starr and Lewis M. Starr, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Oregon, wherein Benjamin Stark is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Paine P. Prim, chief justice of the supreme court of the State of Oregon, this 6th day of October, in the year of our Lord, 1865.

P. P. PRIM, *C. J. Sup. C't, Oregon*.

437 STATE OF OREGON, *County of Multnomah, ss:*

I, William H. Bennett, United States marshal within and for the State of Oregon, do hereby certify that on the 23d day of November, 1865, at the city of Portland, in the county of Multnomah and State of Oregon, I served the within citation upon the within-named Lewis M. Starr, one of the defendants in error, and upon Wm. W. Chapman, attorney for said defendants in error, by delivering to each of them a true copy thereof.

Portland, Nov. 23, 1865. W. H. BENNETT,
U. S. Marshal for Oregon.

[5-ct. U. S. rev. stamp.]

I, William H. Bennett, being duly sworn, say that the statements in the above certificate are true: so help me God.

W. H. BENNETT.

Subscribed and sworn to before me this 23d day of November, A. D. 1865.

[SEAL.] R. WILCOX,
Clerk of U. S. Circuit Court for the District of Oregon.

Citation filed October 6th, 1865, in the supreme court.

R. WILLIAMS,
Clerk of the Sup. Court, Oregon.

Withdrawn for service and citation and returned and filed Nov. 27th, 1865.

R. WILLIAMS,
Clerk Supreme Court, Oregon.

438 Supreme Court of the United States, in error.

BENJAMIN STARK, pl'ff in error,
vs.
ADDISON M. STARR and LEWIS M. STARR, def'ts in error.

Know all men by these presents that we, Benjamin Stark, as principal, and William S. Ladd and Benjamin F. Goodwin, as sureties, are held and firmly bound unto the above-named Addison M. Starr and Lewis M. Starr, in the sum of one thousand dollars, to be paid to the said Addison M. Starr and Lewis M. Starr, their executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 4th day of October, 1865.

Whereas the above-named Benjamin Stark hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled suit by the supreme court of State of Oregon—

Now, therefore, the condition of this obligation is such that
439 if the above-named Benjamin Stark shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

BENJ. STARK, [SEAL.]
By his att'y in fact, W. S. LADD. [SEAL.]
W. S. LADD. [SEAL.]
BENJ. F. GOODWIN. [SEAL.]

Sealed and delivered in presence of—
(Benjamin F. Goodwin inserted in place of Wm. Cree, prior to signing.)
WM. STRONG.

I. Paine P. Prim, chief justice of the State of Oregon, hereby approve the above bond and sureties.

Salem, O'g'n, Oct., 1865. P. P. PRIM.

Filed in my office, October 6, 1865.

R. WILLIAMS, *Clerk Sup. Court, O'g'n.*

440 In the supreme court.

BENJAMIN STARK, plaintiff in error,
vs.
ADDISON M. STARR and LEWIS M. STARR,
defendants in error.

STATE OF OREGON, *ss:*

I, Richard Wiliams, clerk of the supreme court of the State of Oregon, do hereby certify that a true copy of the writ of error to the Supreme Court of the United States in the above-entitled cause was, on the 6th day of October, 1865, lodged in my office by plaintiff's attorney for the defendants in error, indorsed "Supreme Court of the United States, Benjamin Stark, pl'ff in error, *vs.* Addison M. Starr and Lewis M. Starr, def'ts in error; copy of writ of error lodged in pursuance of the statute of the United States in such case made and provided, for the abovenamed Addison M. Starr and Lewis M. Starr, defendants in error.

"WM. STRONG,
"*Att'y for Plaintiff in Error.*

"A. E. WAIT, PAGE & GROVER, and
"WM. STRONG, *Att'ys for Pl'ff in Error.*"

In testimony whereof, I have, on this 27th day of November,
441 at my office in Salem, hereunto set my official signature and the seal of said court.

[SEAL.]

R. WILLIAMS,
Clerk of the Supreme Court of Oregon.

IN THE

Supreme Court of the United States.

No. 100.—December Term, 1867.

Benjamin Stark, *Plaintiff in Error*, vs. Addison W. Starr & Lewis W. Starr, *Defendants in Error.*	In error to the Supreme Court of Oregon.

The controversy in this case grows out of a conflict of titles emanating from the United States; that of the plaintiff in error, under the donation act of 27th September, 1850; that of the defendant in error, under the town-site act of 1844.—(5 Stat., p. 657.)

In the conduct of the controversy with Great Britain upon the extent of our rights in Oregon, the leading advocates of the claims of the United States to that territory advised, as a means to maintain our rights, the adoption of an act "to authorize the occupation and settlement of the Territory of Oregon," &c. Such a measure was proposed as early as 1837, and on 3d February, 1843, a bill, introduced by Senator Linn, passed the Senate, (Cong. Globe, 1842, '43, p. 240,) which may be found on p. 112 of that volume, which, in order to encourage the settlement of our people in said territory, promised, in the first section, "that provision shall hereafter be made by law, to secure and grant six hundred and forty acres,

or one section of land, to every white male inhabitant of the Territory of Oregon, of the age of eighteen years and upwards, who shall cultivate and use the same for five consecutive years, or to his heir, or heirs-at-law, if such there be, in case of his decease. And to every such inhabitant or cultivator (being a married man) there shall be granted, in addition, one hundred and sixty acres to the wife of said husband, and the like quantity of one hundred and sixty acres to the father, for each child under the age of eighteen years he may have, or which may be born within the five years aforesaid. "That no sale, alienation, or contract of any kind shall be valid of such lands before the patent is issued therefor, nor shall the same be liable to be taken in execution, or bound by any judgment, mortgage, or lien of any kind, before the patent is so issued; and all pretended alienations or contracts for alienating such lands, made before the issuing of the patents, shall be null and void against the settler himself, his wife, or widow, or against the heir-at-law, or against purchasers after the issuing of the patent."

On 21st December, 1844, Senator Atchison, on leave, introduced a similar bill. And Mr. A. V. Brown introduced a bill in the House to establish a territorial government in Oregon, which contained similar provisions, which was passed on the 3d of February, 1845. It was not acted on in the Senate because of the late period of the session at which it was presented there. On the 3d February, 1845, therefore, the House sanctioned the policy of Senator Linn's bill, which passed the Senate on that day two years previously, by which the permanent settlers in Oregon were to receive donations of land. This was also the policy of the act of 3d March, 1803, adopted in relation to the disputed territory between the United States and Spain. On the 27th September, 1850, an act was passed entitled "An act to create the office of Surveyor General of the public lands in Oregon, and to provide for the survey, and to make donations to the

settlers of the said public lands," the 4th section of which is in the following words:

"There shall be, and hereby is, granted to every white 'settler or occupant of the public lands, American half-'breed Indians included, above the age of eighteen years, 'being citizens of the United States, or having made a 'declaration according to law of his intention to become 'a citizen, or who shall make such a declaration on or 'before the first day of December, 1851, now residing in 'said Territory, or who shall become a resident thereof 'on or before the first day of December, 1850, and who 'shall have resided upon and cultivated the same for four 'consecutive years, and shall otherwise conform to the 'provisions of this act, the quantity of one-half section, 'or three hundred and twenty acres of land, if a single 'man, and if a married man, or if he shall become mar-'ried within one year from the first day of December, '1850, the quantity of one section, or six hundred and 'forty acres, one-half to himself and the other half to 'his wife, to be held by her in her own right; and the 'Surveyor General shall designate the part inuring to the 'husband and that to the wife, and enter the same on the 'records of his office, and in all cases where such married 'persons have complied with the provisions of this act, 'so as to entitle them to the grant as above provided, 'whether under the late provisional government of Ore-'gon or since, and either shall have died before patent 'issues, the survivor and children, or heirs of the de-'ceased, shall be entitled to the share or interest of the 'deceased in equal proportions, except when the deceased 'shall otherwise dispose of it by testament, duly and pro-'perly executed according to the laws of Oregon: *Provi-'ded*, That no alien shall be entitled to a patent to lands 'granted by this act until he shall produce to the Sur-'veyor General of Oregon record evidence that his na-'turalization as a citizen of the United States has been 'completed; but if any alien, having made his declara-

'tion of intention to become a citizen of the United 'States after the passage of this act, shall die before his 'naturalization shall be completed, the possessory right 'acquired by him under the provisions of this act shall 'descend to his heirs-at-law, or pass to his devisees, to 'whom, as the case may be, the patent shall issue: *Pro-* '*vided further*, That in all cases provided for in this sec- 'tion the donation shall embrace the land actually occu- 'pied and cultivated by the settler thereon: *Provided* '*further*, That all future contracts by any person or per- 'sons entitled to the benefit of this act, for the sale of the 'land to which he or they may be entitled under this act, 'before he or they have received a patent therefor, shall 'be void: *Provided further, however*, That this section shall 'not be so construed as to allow those claiming rights 'under the treaty with Great Britain relative to the Ore- 'gon Territory to claim both under the grant and the 'treaty, but merely to secure them the election and con- 'fine them to a single grant of land."—(9 Stat., ~~196.~~) 496

The 6th section of the act required that the settler should notify the Surveyor General of the tract claimed by him under the law within three months after the survey has been made; and the 7th section provided, that within twelve months after the surveys had been made each person claiming a donation right under this act should prove, to the satisfaction of the Surveyor General, the commencement of the settlement and cultivation required by this act; and after the expiration of the four years from the date of such settlement, shall prove in like manner, by two disinterested witnesses, the continued residence and cultivation required by the 4th section of this act. In accordance with these provisions, and the regulations made by the General Land Office to carry the act into effect, the plaintiff in error, on the first of May, 1852, within three months after survey, gave the notice required of the tract claimed by him, and afterwards, on 27th of August, 1853, proved by two disinter-

ested witnesses the fact of continued residence and cultivation for four years, which had previously expired, all of which was done in the usual manner and in the form prescribed by the regulations of the department.

On the 10th of September, 1853, the Surveyor General issued to said Starke donation certificate No. 69, and on the 8th of December, 1861, a patent was issued to said Stark, which included the lots here in question but subject to such rights as may exist in the City of Portland, in virtue of a patent issued on the 7th day of December, 1860, the day previous, to the authorities of the City of Portland, under the town-site act of 1844, which also included the lots in question.

The defendants being in possession of the lots in controversy brought a suit in the Chancery side of the State Circuit Court to quiet title.

S. Coffin, D. H. Lounsdale, and W. H. Chapman, also had an interest in what was called the Portland Land Claim, but in March, 1850, these parties came to an agreement with Stark as to boundaries and the lots in question fell within the tract which was patented to Stark. The defendants, in their original bill, alleged that they acquired title from Coffin, Lounsdale, and Chapman, and that by the terms of the agreement between these parties and Stark he was bound to release to the defendants when he got his patent. But this ground was subsequently abandoned and they filed an amended bill (p. 25 of the Record) in which they set up the patent to the city as their exclusive source of title and claim that they are entitled to the benefit of it from being in possession, &c., although in consequence of the non-action of the state legislature they had not yet acquired the formal title. They then allege that Stark procured his patent by fraud, that his proof of settlement and cultivation for four years, upon which he obtained the patent certificate was false, and pray, that it may be held for nought, or if valid at all, that it may be

held subject to the prior right granted to the city for the benefit of the occupants of lots, among whom the complainants were. Stark denied all fraud, alleged occupancy for four years, and denied the validity of the patent issued to City of Portland.

The Circuit Court found all these issues against the plaintiff in error, decreed his patent void as to the defendants in error, and enjoined all proceedings under it against them, (p. 40–41.) The Supreme Court affirmed this decree, (p. 187.)

I. We contend that this decision was erroneous because the patent to the city authorities was absolutely void—the act of 1844 under which it issued not being in force in Oregon—and did not authorize parties claiming under it to go behind the patent to Stark and question the regularity of the preliminary proceedings under the act of 27th September, 1850, under which his patent issued.

The act of 1844 is but amendatory of the pre-emption law of 1841. The law of 1841 contains the provision upon which the act of 1844 operates. It reserves (§ 10, 5 Stat., p. 455) from pre-emption town-sites to the extent of 320 acres, and the first section of the act of 1844 (5 Stat., p. 657) authorizes the public authorities to enter the land so reserved. There is no operation, therefore, of the act of 1844, except on lands to which the act of 1841 is applicable, just as the act of 27th January, 1831, (4 Stat., p. 435,) relinquishing the right of the United States to school lands, is only applicable to the lands reserved for the use of schools by the act of 13th June, 1812, (2 Stat., p. 748.) Thus the act of 1844 provides, that "whenever any portion of the SURVEYED public lands has been or shall be settled upon and occupied as a town-site, AND THEREFORE NOT SUBJECT TO ENTRY UNDER THE EXISTING PRE-EMPTION LAWS, it shall be lawful, in case such town shall be incorporated, for the corporate au-

thorities, and if not incorporated, for the judges of the county in which such town may be situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied," &c.

The language of the act admits of no controversy, on the point that it applies only to SURVEYED lands, which are excepted from operation of the pre-emption law, and, of course, lying in a district to which the pre-emption law applies. But it is not pretended that the pre-emption law was in force in Oregon in 1850. There were not only no SURVEYED lands there at that date, but Congress had, in the donation law of 1850, made more liberal provision for permanent settlers in that Territory than by the pre-emption act even. The donation law GAVE a settler of four years' standing any public land occupied by him, except mineral and saline lands, and places selected for dock-yards, forts, &c., and does not except, as the pre-emption act does, lands which may be settled and occupied as town sites. The law of 1844, which was inapplicable, from the condition of the land in Oregon when the donation law of 1850 was passed, was therefore forbidden by that law from being applied to the grants made by it, and the repugnance is such, indeed, as necessarily to repeal the act of 1844, if it could be supposed to have been previously in force. This is its plain meaning on its face, and when its provisions are compared with the pre-emption law, and it is observed that whilst it follows the pre-emption law in some of its savings or exceptions, it omits the saving or exception of places settled or occupied as town sites, it is still more plain that the policy of the law was to prefer the oldest continuous settler to those who might come in afterwards, whether in numbers sufficient to make a town or not; and when it is considered that the territory was a disputed territory at the time the law was first proposed, that the persons now claiming through the corporate authorities all went there long after the dispute was settled, and that the act of 1850 is but a fulfill-

ment of the pledges made to the settlers, the reason for its preference of the earliest permanent settlers is manifest, and shows that it would be grossly unjust to construe it otherwise. It may be remarked also, that the donation law of 27th September, 1850, makes special provision for Oregon City, which would have been wholly unnecessary if the law of 23d May, 1844, was then applicable to Oregon.

This point was fully discussed and decided in accordance with the foregoing views in Oregon in the cases of Lounsdale vs. Portland, in United States District Court, 1st Oregon Reps., p. 382; and in Martin vs. T'Vault, before Supreme Court, *ib.*, p. 77.

II. If the town-site act was not in force in Oregon in 1853, the defendants in error are in the same condition as the petitioners in Burgess vs. Gray, 16 Howard. p. 65, having "no title of any description, derived from the constituted authorities, of which any court of justice can take cognizance."

In that case the court said "the mere possession of 'public land will not enable the party to maintain a suit 'against any one who enters on it, and more especially 'he cannot maintain it against persons holding possession 'under title derived from the proper officers of the gov-'ernment. He must first show a right in himself before 'he can call in question the validity of theirs."

In Wilcox vs. Jackson, 13 Peters, 511, the court says:

"Before we proceed to inquire whether the land in 'question falls within the scope of any of these prohibi-'tions, it is necessary to examine a preliminary question 'which was urged at the bar, which, if sustainable, 'would render that inquiry wholly unavailing. It is this: 'That the acts of Congress have given to the registers 'and receivers of the land offices the power of deciding 'upon claims to the right of pre-emption; that upon 'these questions they act judicially; that no appeal

'having been given from their decisions, it follows, as a 'consequence, that it is conclusive and unreversible. This 'proposition is true in relation to every tribunal acting 'judically whilst acting within the sphere of its jurisdic- 'tion, where no appellate tribunal is created, and even 'where there is such appellate power the judgment is 'conclusive when it only comes collaterally into ques- 'tion, so long as it is unreversed. But directly the re- 'verse of this is true in relation to any court acting beyond 'the pale of its authority. The principle upon this sub- 'ject is concisely and accurately stated by this court in 'the case of Elliot vs. Piersol, 1 Pet., 340, in these 'words: 'Where a court has jurisdiction it has a right 'to decide any question which occurs in the cause; 'whether its decisions be correct or otherwise, its judg- 'ment, until reversed, is regarded as binding in every 'other court. But if it acts without authority, its judg- 'ment and orders are regarded as nullities.' "

Applying this doctrine here, the patent to the town authorities of Portland is a nullity, being given without authority of law by the land department, and the patent to Stark cannot be called in question by persons holding under no title whatever. See also Miller vs. Kerr, 7 Wheat. p. 1; Polk's Lessee vs. Wendell, 9th C., 99; Patterson vs. Winn, 11 Wheat., 384; Bodley vs. Taylor, 5 Cranch., 191; Easton vs. Salisbury, 21 How., 426.

In Bodley vs. Taylor, 5 Cranch, 191, a bill in chancery was filed by a younger patentee to set aside the older patent. The court hold that they can entertain jurisdiction of such suit, and that the first point of inquiry in the case is the validity of the entry on which the plaintiff's patent rested, thus—"Taylor holding the eldest patent it is necessary that the complainants below should found *their* title on a good entry. The validity of their entry, therefore, is the *first* subject of examination," p. 223. That is, the court declare when these conflicting claims are brought into a court of equity, asking it to

decree to be void a patent issued to the defendant, "*the first subject of examination*" is the validity of the plaintiff's title. And further up on same page, 223, the court say: "This certainly brought the validity of the entries before the court, *but it also brings with that question every other which defeats the equity of the plaintiff.*"

Hoofnagle vs. Anderson, 7 Wh., 212, (5 Pet. Cond., at p. 272,) says: "If the patent has been issued irregularly the government may provide means for repealing it; but no individual has a right to annul it, and consider the land as still vacant."

In Miller vs. Kerr, 7 Wheat., 1, there were two patents opposed to each other in a chancery suit, which was an injunction to restrain an action of ejectment. In this case the court carried out the principles declared as decisive in Bodley vs. Taylor, and examined into the defects of the complainant's title. It was found that in issuing a certificate, the ministerial officer had issued it for lands not authorized to be sold; that is, for lands set apart for claims of Virginia soldiers in the *continental* line instead of the *state* line. On this unauthorized certificate the plaintiff had procured his patent, and, thereupon, he attacked the patent of the defendant. The court held that the defect in the plaintiff's title precluded him from obtaining the relief.

Patterson vs. Winn, (11 Wh., 380,) reviews the previous decisions of the court upon the question—where the court will hold absolutely void, a patent issued against law, when the question comes up otherwise than in a direct proceeding to vacate the patent—and says: "There are cases in which a grant is absolutely void or inoperative, as where the State has no title to the thing granted, or *where the officer had no authority to issue the grant.* In such cases the validity of the grant is necessarily examinable at law. * * * We may, therefore, assume as the settled doctrine of this court, that if a patent is absolutely void upon its face, or the issuing thereof was without authority, or was

prohibited by statute, or the State had no title, it may be impeached collaterally in a court of law, in an action of ejectment. But, in general, other objections and defects complained of must be put in issue, in a regular course of pleadings on a direct proceeding to avoid the patent." —(6 Pet., Cond., 357–358.)

See also Brush vs. Ware, (15 Pet., 93–106.)

The same principle is applied in the case of Easton vs. Salisbury, (21 Howard, 426,) where the defendant had a grant from Congress dated 4th July, 1836, and the plaintiff had a patent dated 28th of May, 1827.—(P. 431.)

The action was ejectment. The court held that it would examine into the question whether or not the land embraced in the patent had been authorized to be sold, and if not, that the patent was void at law—saying, p. 431: "The President has no right to issue patents for land, the sale of which is not authorized by law."

In the case at bar, the patent relied upon by the defendants in error was issued under the act of 1844, and if this act does not authorize the President to sell the lands in question, the sale and all acts by the executive officers in relation thereto, including issuing the patent, are without any authority of law, and give the defendants in error no standing in the court below. While the defendant below holds a patent for lands, the entry of which, as made, was authorized, it will be considered to be valid until the contrary be adjudged by regular proceedings at law.

M. BLAIR,
F. A. DICK,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

No 100. DECEMBER TERM, 1867.

BENJAMIN STARK, PLAINTIFF IN ERROR,

VERSUS

ADDISON M. STARR AND LEWIS M. STARR,
DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

JOHN A. WILLS,
Of Counsel for Appellees.

McGILL & WITHROW, PRS.

Supreme Court of the United States.

No. 100.

DECEMBER TERM, 1867.

BENJAMIN STARK, PLAINTIFF IN ERROR,

vs.

ADDISON M. STARR AND LEWIS M. STARR,
DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

STATEMENT OF THE CASE.

This is a writ of error, brought by Stark, the original defendant, against the Starrs, the original plaintiffs in the State court, under the 25th section of the judiciary act of 1789, to reveiw the decree of the supreme court of Oregon, which affirmed the decree of the circuit court of the State of Oregon for the county of Multnomah, sitting as a court of equity.

In the latter court, the action in the beginning was a suit in equity, brought by the Starrs against Stark, to quiet their title to lots Nos. 1, 2, and 4, in block 81, of the city of Portland, under the following section of the code of Oregon:

"SEC. 500. Any person in possession, by himself or his tenant, of real property, may maintain *a suit in equity* against another who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest." (General Laws of Oregon, 1866, p. 273, § 500.)

For the purposes of this case, in this court and on this writ of error, it is entirely unnecessary to notice the various pleadings in the cause on both sides prior to the plaintiff's

"Amended Bill Engrossed," (printed Record, pp. 25–27,) and to the defendants' answer and the plaintiff's replication thereto. (*Ib.*, pp. 31–32, 34.) All the pleadings prior thereto, by way of amendment and demurrer, were merged in them. The cause of action presented by them is the only one now to be considered, because it was upon the issues formed by them that the case was tried by the circuit court of Multnomah county, (*ib.*, pp. 39–40,) and because it was upon them that the decree of that court was affirmed by the supreme court of Oregon. (*Ib.*, pp. 187–189.) We are concerned with the actions of those courts only so far as they may have misinterpreted or misapplied the law of the United States.

By the amended bill engrossed, the plaintiffs claimed title to the lots in question, under the patent of the United States, issued December 7, 1860, to the corporate authorities of the city of Portland, under the town-site act of May 23, 1844, and its supplement, in trust for the several use and benefit of the occupants of the land therein described, according to their several interests under the said act of May 23, 1844. (*Ib.*, pp. 25, 27, 28.)

It also charged, further, that the defendant claimed title to a tract of land including said lots, under a patent from the United States to the defendant, dated December 8, 1860, issued under the donation law of September 27, 1850, and purporting to be founded upon donation certificate No. 69. (*Ib.* pp. 25, 29, 30.) That, although the said certificate contained a clause to the effect that *Benjamin Stark had proven*, to the satisfaction of the surveyor-general of Oregon, *the fact that such settlement was commenced* on the 1st day of September, 1849, *four years prior to the date of said certificate*, and had, in pursuance of the 7th section of the act of the 27th of September, 1850, creating the office of the said surveyor-general, established by two disinterested witnesses the fact of continued residence and cultivation, required by the 4th section of said act, the plaintiffs, nevertheless, alleged that the said Benjamin Stark, contriving and intending to circumvent and defraud the plaintiffs and others, occupants as aforesaid, who were the owners of large and valuable improvements upon said lots so claimed by him, &c., *had falsely and fraudulently procured to be established and proven before and to the satisfaction of the said surveyor-general the said facts of settlement and cultivation*, he, the said defendant, well knowing, at the date of said certificate, the fact to be that he had *not* commenced his residence and cultivation within the boundaries of and upon said tract on or prior to the said 1st day of

September, 1849, and had *not*, prior to the date of said certificate, continuously, for four years, resided upon and cultivated said tract, as required by the 4th section of said act.

It also claimed the benefit of the reservation made in said last patent in favor of the occupants of town lots, under the city entry and patent before stated, and charged that the defendant denied the plaintiffs' right to the property in question, under said city patent and reservation; that he was threatening to sue them, &c., whereby their title was clouded, &c. Wherefore they prayed that the said patent to the defendant, so unlawfully obtained, might be set aside and held for naught; or, if the said patent should appear to have been legal and binding, that, *in virtue of the reservation therein contained* for the benefit of the occupants of town lots, (among whom were the plaintiffs,) the defendant might be decreed to release to the plaintiffs all his right and title to said lots, and forever enjoined from proceeding at law to recover the possession thereof, or otherwise disturbing the plaintiffs in their quiet and peaceable possession, and that plaintiffs should have such other relief as to equity pertained. (*Ib.*, pp. 25–27.)

The defendant's answer denied the equity of the bill, and its allegations, generally and in detail. (*Ib.*, pp. 31, 32.)

On the 12th of June, 1865, the circuit court decreed the defendant's patent of December 8, 1860, as against the plaintiffs', to be void, and enjoined the defendant, and all others claiming under him, from commencing any suit to eject the plaintiffs, their heirs or assigns, from the possession of the property in question. (*Ib.* pp. 39, 40.)

On the 4th of September, 1865, on appeal by defendant to the supreme court of Oregon, this decree was affirmed, (*ib.*, pp. 187, 188.) Whereupon this writ of error was sued out by the defendant, under the 25th section of the judiciary act, to reverse this judgment of the supreme court of Oregon.

One of the striking peculiarities of this case is, that each of the two patents relied upon by the plaintiffs and the defendant respectively contains *reciprocal exceptions* in favor of the rights conveyed by the other.

The patent to the city of Portland makes its grant of the lands described with this reservation: "Subject, however, to the decision of the Commissioner of the General Land Office, of 18th October, 1858, expressly reserving any valid claims which may exist in virtue of the several donations of Benjamin Stark, certificate No. 69, Daniel H. Lounsdale, certificate No. 1,022, William W. Chapman, certificate No.

68, and Stephen Coffin, certificate No. 67, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor-general," &c., to have and to hold the same, &c., "subject to the conditions and reservations herein expressed." (Printed Record, pp. 27, 28.)

The patent to Benjamin Stark contains this recital among others: "And whereas, it appears that the greater portion of this claim is covered by an entry made on the 1st day of February, 1858, by the corporate authorities of the city of Portland, which entry has been approved, and will be patented to the said corporate authorities in trust for the several use and benefit of the occupants thereof, according to their respective interests; now know ye, that the United States do grant unto Benjamin Stark the tract of land above described, *subject to such rights as may exist in virtue of the aforesaid entry for the city of Portland*, to have and to hold the aforesaid tract, &c., *subject as aforesaid*, to the *said entry for the city of Portland*." (*Ib.* p. 29.)

These two patents are tied together like the Siamese twins, and the effect of their reciprocal exceptions is, to leave the question of right, as between them, *undecided* by the executive branch of the Government, and to create a necessity for its judicial determination when the rights conferred by either is considered. But, unlike those twins, the life of one of these patents involves the death of the other.

The principal object of this suit, in the final shape which it assumed in the circuit court of the State of Oregon, was, and is now, to determine *the question left undecided* by the General Land Office, *in regard to the relative validity of these two patents*, and thereby to quiet the title to a large amount of property in the city of Portland. The appellees, in common with others in like condition, who are now in possession and have made large and valuable improvements on their land, set up and claim title under the patent issued to the city of Portland, for their benefit, and consequently maintain the *invalidity* of the patent issued to Stark, the appellant. That patent, or rather the donation certificate on which it rests, was the basis of the *exception or reservation out of the grant of land made to the city of Portland* for the use and benefit of its inhabitants, according to their respective possessions and interests in the land in said city. The present case is made a test case, in order to determine the rights of the people of the city of Portland, on the one hand, and the pretensions of the appellant on the other.

ARGUMENT FOR APPELLEES.

Two leading questions are presented by this record—one of law, and the other of fact. Fortunately, the determination of either of them against the appellant will sustain the decree of the court below.

The question of law arises out of the conflict between the first patent of December 7, 1860, issued to the city of Portland, under the act of Congress dated May 23, 1844, commonly called the "Town-site Law," and the second patent, of December 8, 1860, issued to Stark, under the provisions of the act of Congress dated September 27, 1850, commonly called the "Donation Law." That question is simply this: Which of these two laws was in operation first? Was the town-site law of 1844, by virtue of the act of August 14, 1848, organizing the Territory of Oregon, in force in Oregon prior to the enactment of the donation law of 1850?

The appellees assert that it was. If so, then the second patent, under which the appellant claims, and the exception contained in the first, made on behalf of it, are void, as against the appellees, and this controversy is ended.

But admitting, on the contrary, that the donation law of 1850 was in force prior to the town-site law of 1844, then the question of fact is, whether the appellant Stark complied with the terms and conditions of the donation law, so as to be entitled to a patent under it? In other words, did he *continuously* reside upon and cultivate the land in question for four consecutive years, from September 1, 1849, to September 10, 1853, the date of his donation certificate? (See printed Record, p. 186.) If he did, then his patent is valid. But if he did not, then it is void, as against the rights acquired by the city of Portland under the first patent, even if the town-site law was not in force in Oregon until after the act of July 17, 1854, because Stark's patent is dated December 8, 1860. After that date and as against him, it is sufficient that the town-site law was in force in Oregon before the date of the patent to the city of Portland.

The appellees assert that Stark's patent is void, as against them and their rights under the first patent, because, in point of fact, he did not comply with the said terms and conditions of the donation law of 1850. This is the main question of fact now to be determined by the evidence in the record. This issue was tried by the circuit court of Multnomah county in the beginning, and it was found *against* the appellant. He carried the question to the supreme court of Ore-

gon, where it was re-tried, and it was found against him a second time. He now brings it here, and this court is called upon to re-examine it a third time. If it is found against him, the decrees of the two lower courts rendered in this case must be affirmed, on the ground that his patent is fraudulent and void, both in itself and as against the appellees claiming under the prior patent issued to the city of Portland.

I.

Was the town-site law of 1844 in force in Oregon prior to the enactment of the donation law of 1850, by virtue of the fourteenth section of the act of August 14, 1848, organizing the Territory of Oregon?

The General Land Office has decided that it was.

That section, so far as relates to this subject, provides "that all laws heretofore passed in said Territory making grants of land, or otherwise affecting or encumbering the title to lands, shall be, and are hereby, declared to be null and void; *and the laws of the United States are hereby extended over and declared to be in force in said Territory, so far as the same or any provision thereof may be applicable.*"

General Laws of Oregon, 1845–1864, p. 76.

This provision had two manifest objects: First, to nullify all land laws and land grants made by the provisional government of Oregon. Second, to extend the laws of the United States, including its land laws, of which the town-site law of 1844 formed a part, to the Territory of Oregon, as far as they were applicable thereto. The first object was the necessary condition of the second, and without which they could not be applied.

Now, unless the land laws of the United States, including the town-site law, were extended by this act to the Territory of Oregon, we have this anomaly, that by this law all land titles then existing were nullified, and in a law organizing that Territory and providing for its settlement, no means were provided whereby incipient title to lands could be acquired from the United States, their sole proprietor. The primary want, on the part of the settler, was title to land, and these laws must be regarded as extended by that act, unless it can be shown that they were not needed, and were inapplicable to the condition and wants of the people of the Territory.

But the land laws of the United States in themselves, it must be evident, were as applicable to Oregon as to any

other Territory of the United States; and that they were *needed* is demonstrated by this controlling fact, that no other means was provided whereby title to land could be acquired in the said Territory.

Various objections are made to this view of the law.

The fact that the land laws of the provisional government had made more liberal land grants to settlers than those of the United States, and that various projects of a like kind had been proposed, but had not been adopted before the organization of that Territory, are urged by the appellant as reasons against it. These, however, have no tendency to show that the land system of the United States was not extended to Oregon by this act. On the contrary, it shows the very reverse; that Congress, at first, was unwilling to make more liberal grants than those provided by its general land system. The fact that more liberal grants were afterwards offered by the donation act of September 27, 1853, has no tendency to prove that, before its passage, the general land system of the United States had not been extended to Oregon by the organic act of 1848, contrary to its express terms.

The decision of this court, in the case of Lounsdale *vs.* Parrish, (21 Howard's U. S. R, p. 290,) has been regarded in Oregon as giving countenance to this idea. It is true there is an *obiter dictum* to that effect in the opinion of Judge Catron. But that is a mistake. The right asserted in that case arose under the land law of the provisional government, which was expressly declared by the organic act to be "null and void." "It was for this reason that the court refused to take jurisdiction in Lounsdale *vs.* Parrish, and dismissed the appeal." (Sparrow *vs.* Strong, 3 Wallace's U. S. R., p. 104, Ch. J. Chase.)

The main provisions of the donation act of September 27, 1850, apply *exclusively* to agricultural land. The donee is required, by the fourth section, to reside upon and *cultivate* it for four successive years. It cannot apply to land used for town sites, or for purposes of business and trade, because two provisos of this section provide, among other things: 1st. "That in all cases provided for in this section the donation shall embrace the land *actually occupied and cultivated by the settler thereon.* 2d. That *all future contracts* by any person or persons entitled to the benefit of this act *for the sale of land* to which he or they may be entitled under this act, *before he or they have received a patent therefor, shall be void.*"

These provisions are incompatible with the use of land

granted under this act, as a town-site prior to the grant of a patent therefor: 1st, because land used for a town-site cannot be cultivated; and, 2d, because the subdivision and sale of lots therein is prohibited and rendered void.

But the growth of towns in the Territory was a fact necessarily forseen, and must have been provided for. We have just seen that it was not provided for by the donation act; it must, therefore, have been provided for by some other law. If the town-site law of 1844 was in force, as we contend it was, this want was provided for; otherwise it was not.

It is argued by the appellant that this law was not in force, because, by the eleventh section of the donation act, a special provision is made in regard to the "Oregon city claim." But the answer to that objection is to be found in the section itself, viz, that this provision was made because of the special facts of that case, and because it was desired to give the Legislature of the Territory authority to apply the proceeds of the sales of lots to the establishment and endowment of a university. This exception has, therefore, no tendency to show that the town-site law was not then in force.

It may also be argued that this law was not in force until extended to that Territory by the act of July 17, 1854. (General Laws of Oregon, p. 94.) But that act did not extend the town-site law of 1844 or the pre-emption law of 1841 to Oregon for the first time. It merely *repealed the restriction* which had limited their operation to *surveyed lands*, (see 1 Brightly's Digest, p. 473, sec. 83, note (a;) *ib.*, p. 475, secs. 97, 98,) and extended their application to *unsurveyed* as well as to *surveyed lands*, to which they had previously been limited.

"*Be it enacted, &c.*, That the donations hereinafter to be surveyed in Oregon and Washington Territories, claimed under any of the provisions of the act to create the office of surveyor-general of public lands in Oregon, &c., approved September 27, 1850, shall, in no case, include a town site or lands settled upon for purposes of business or trade, and not for agriculture; and all legal subdivisions included, in whole or in part, in such town sites, or settled upon for purposes of business or trade, and not for agriculture, shall be subject to the operations of the act of May 23, 1844, 'for the relief of citizens of towns upon lands of the United States under certain circumstances,' *whether such settlements were made* BEFORE OR AFTER THE SURVEYS." (General Laws of Oregon, pp. 94, 95, sec. 1.)

"SEC. 3. *And be it further enacted*, That the pre-emption

privilege granted by the act of September 4, 1841, shall be, and the same is hereby, extended to the lands in Oregon and Washington Territories, *whether surveyed or unsurveyed*, not rightfully claimed, entered, or reserved, under the provisions of this act, or the acts of which it is amendatory, nor excluded by the terms of the said act of 1841, *with the exception of unsurveyed lands, as above mentioned*," &c. (*Ib.*, p. 95.)

If these views are correct, then it follows that the town-site law of 1844 was in force in Oregon prior to the enactment of the donation act of 1850, and that the patent of December 7, 1860, (under which appellees claim,) granted to the city of Portland, under the town-site law of 1844, is superior, both in point of time and of right, to the patent of December 8, 1860, granted to Stark, under the subsequent law of September 27, 1850.

II.

But if it shall be held that the town-site law of 1844 was not extended to Oregon before the passage of the act of July 17, 1854, it will not be denied that it was in force *after* the date of that law.

Both the patents now under examination were issued *after* the passage of that act, and at a time when the operation of the town-site law of 1844 in that Territory cannot be disputed.

If, then, it can be shown that Stark had not complied with the terms and conditions of the donation act, under which his patent was issued, it was void, as against the prior patent issued to the city of Portland, under the act of 1844, at a time when the latter act was undoubtedly in force.

This leads to the second branch of the inquiry, the question of fact in the case:

Did Stark continuously reside upon and cultivate the land in question for four consecutive years, from September 1st, 1849, to September 10th, 1853, the date of his donation certificate?

But the right of the appellees to go into this inquiry is denied in the outset by the appellant, and it is insisted that his patent is conclusive evidence on this point, as against the appellees. It will be convenient, therefore, to dispose of this objection before going into the question of fact.

This, it will be remembered, is a proceeding *in equity*, specially instituted to try the relative validity of two conflicting patents. It is not the ordinary case of a conflict between an

equitable title and a legal title, but it is the case of patent against patent; and to make the case still stronger, it is the case of two patents containing reciprocal exceptions of the rights conveyed by each other, and thereby necessitating a judicial decision of their relative value.

The right to institute this inquiry in this way is fully established by numerous decisions of this court.

The same objection was made in the case of Garland *vs.* Wynn, (20 Howard U. S. R., p. 6). That case, like this, was the case of a bill in equity filed by Wynn, an equitable claimant in the State circuit court of Arkansas, to set aside a patent issued to Garland. The circuit court set aside the patent in favor of Wynn's equitable title, and its decree was affirmed by the supreme court of Arkansas; and to reverse that decree Garland prosecuted a writ of error under the 25th section of the judiciary act; Garland insisted, as is done in this case, "that by the law of the land the circuit court had no authority or jurisdiction to set aside or correct the decision of the register and receiver, and that their adjudication, &c., was final and conclusive, and cannot be inquired into, or in any manner questioned, modified, or set aside." * * *

Says Judge Catron:

"The question is, have the courts of justice power to examine a contested claim to a right of entry under the pre-emption law [donation law] and to overrule the decision of the register and receiver, confirmed by the commissioner, in a case where they have been imposed upon by *ex-parte* affidavits, and the patent has been obtained by one having no interest secured to him in virtue of the pre-emption [donation] laws, to the destruction of another's right who had a preference of entry, which he preferred and exerted in due form, but which right was defeated by false swearing and fraudulent contrivance, brought about by him to whom the patent was awarded.

"The general rule is, that when several parties set up conflicting claims to property, with which a special tribunal may deal, as between one party and the Government, regardless of the rights of others, the latter may come into the ordinary courts of justice and litigate the conflicting claims. Such was the case of Comegys *vs.* Vasse, (1 Peters, 212,) and the case before us belongs to the same class of *ex-parte* proceedings; nor do the regulations of the Commissioner of the General Land Office, whereby a party *may* be heard to prove his better claim to enter, oust the jurisdiction

of the courts of justice. We announce this to be the settled doctrine of this court.

"It was, in effect, so held in the case of Lytle *vs.* The State of Arkansas, (9 Howard, 328;) next in the case of Cunningham *vs.* Ashley, (14 Howard;) and again in the case of Bernard *vs.* Ashley, (18 Howard, 44.)" The judgment of the supreme court of Arkansas was affirmed. (*Ib.*, p. 8.)

The same point was again made, and was ruled in the same way, in Lindsay *vs.* Hawes, (2 Black's U. S. R., 554,) in which the previous authorities were reviewed and approved, and the case of Garland *vs.* Wynn was cited as containing the true exposition of the law on this subject. (*Ib.*, pp. 559–560.) See also, to the same effect, State of Minnesota *vs.* Bachelder, (1 Wallace's U. S. R., pp. 111, 115;) O'Brien *vs.* Perry, (*ib.*, p. 139;) Ross *vs.* Barland, (1 Peters's U. S. R., p. 664,) where the same doctrine is sanctioned and applied *in actions at law*, in those States in which equitable defences are allowed in suits at law.

But if the general law were otherwise, there can be no doubt of the right to make the inquiry in this case; because, by the special provision of the donation act, the decisions of the surveyor general are *not made final and conclusive*, but are only preliminary to the decision of the Commissioner of the General Land Office, (who, in this case, has made no decision,) or to a final decision according to law.

Section 7 provides that "the said surveyor general shall return the proof [of the donation claim] so taken to the office of the Commissioner of the General Land Office, *and if the said Commissioner shall find no valid objection thereto*, patents shall issue for the land, according to the certificates aforesaid, upon the surrender thereof."

Section 13 also provides, "that all questions arising under this act shall be adjudged by the surveyor general *as preliminary to a final decision according to law.*"

The right to make the inquiry being thus established, both upon general principles of law and by the special provisions of the donation act, and the action of the Commissioner of the General Land Office under it, we return to the inquiry: What are the facts established by the evidence in this case?

The most convenient and condensed summary of the evidence will be found in the findings of the circuit court of Multnomah county, as given in the printed Record, pp. 41, 42. For the convenience of the court, each class of facts

found will be given, together with distinct references to the testimony of the witnesses by which they are supported.

First finding: "That the defendant (Stark) had, during the time between September, 1849, and September, 1850, a *mercantile house* on the *claim of John H. Couch, adjoining the tract claimed* by the defendant; a mercantile house in San Francisco, California, and one in New York, in co-partnership with other persons; *was himself a merchant*, and *in actual charge, and the managing partner of the house in San Francisco.*

It is *not* found that the defendant had any house, residence, or place of business upon the tract covered by his notification and patent *prior to the fall* of 1850." (*Ib.*, p 41.)

In support of this finding, see the testimony of plaintiff's witnesses: Sherry Ross, *ib.*, p. 49, 50, 51, 52; Stephen Coffin, pp. 55, 58, 59; Wm. S. Caldwell, pp. 64, 65, ans. 18, p. 66, ans. 1 and 9, p. 67, ans. 1, p. 68, ans. 1; A. B. Hallock, p. 69, ans. 6–11; John S. Campbell, pp. 77, 78; George H. Flanders, pp. 86, 87; Wm. M. King, pp. 91, 92; J. L. Parrish, pp. 96, 101; F. De Witt, p. 111, ans. 28, &c.; A. Holbrook, pp. 112, 113. Documentary Evidence: Exhibit C, p. 17; Power of Attorney, Stark to Sherman, p. 121; Deed, Stark to Griffin, pp. 122, 123; Deed, Stark to Hallock & Webber, p. 125; Deed, Stark to Brydges, in April, 1853, pp. 127, 128.

See, also, the testimony of defendants' witnesses to the same effect: W. H. Bennett's cross examination, (pp. 131, 133.) He boarded, in 1850, at the Warren house. William E. Molthrop, (pp. 135, 136, 137.) John H. Couch, (p. 139, ans. 8, 12, pp. 142, 143.) James B. Stephens, (p. 146, ans. 25.) William S. Ogden, (p. 147, ans. 6, 7, p. 149, cross-ans. 4.) Shubrick Norris, (p. 180.)

Second finding: "That, up to 1851, the defendant was engaged in mercantile business and commerce between Portland, San Francisco, and New York, but spent the greater part of his time at San Francisco between September, 1849, and September, 1850." (*Ib.*, p. 41.)

In support of this finding, besides the foregoing evidence, see testimony of plaintiff's witnesses: *Coffin*, (p. 59, ans. 45.) *Failing*, (p. 60, ans. 3–6.) Defendant's witnesses: Stephens, (pp. 144, 145, ans. 9; pp. 146, 148, 149.) Hamilton, (p. 157.) Wait, (p. 168.) Norris, (p. 177, ans. 3, 5, p. 180.)

Third finding: "That the defendant (Stark) was in Port-

land, Oregon, in June, 1850, and in August, 1850. One Sherman, an agent of the defendant, commenced the construction of a building upon the tract described in defendant's patent, which was *afterwards used as an office*, and was occupied by defendant's agent, but it is *not* found that defendant himself ever occupied this building, if at all, prior to the — October, 1850." (*Ib.*, p. 41.)

In support of this finding, see the testimony of the following witnesses: Hallock, (p. 71, cross-examination, ans. 7.) Ogden, (p. 150.) Deady, (pp. 156, 157.) Hamilton, (p. 157, 158.) Wait, (p. 168, 171.) Holmes, (p. 176.) Norris, (pp. 177, 179, 180.)

Fourth finding: "That defendant *left Oregon in October*, 1850, and *was absent in the Atlantic States and in California till some time in* 1851, but *with the intention* of returning to Oregon and of *making a home* on the tract named in his patent." (*Ib.*, p. 41.)

In support of this finding, in addition to the preceding evidence, see specially the testimony of Hallock, p. 70, cross-exam., ans. 3. Defendant's witnesses: Lovejoy, p. 76; Parrish, p. 97, ans. 11, 12; Wait, p. 171.

Fifth finding: "That prior to his departure, in October, 1850, the defendant caused a *dwelling-house* to be erected on the tract, which was *leased to a tenant and occupied by a tenant till defendant's return in* 1851, and occupied by defendant himself, as a boarding-place or residence, from his return till 1861." (*Ib.*, p. 42.)

In support of this finding, see the testimony of Parrish, p. 97.

Sixth finding: "That portions of this tract were, prior to March, 1850, divided into lots, and were occupied at that time and have been, up to the commencement of this suit, occupied for purposes of trade and commerce." (*Ib.*, p. 42.)

In support of this finding, see the testimony of Parrish, p. 104; Hallock, pp. 113, 114; Warren, pp. 117, 118, 119.

Seventh finding: "That a part of the premises in controversy in this suit, to wit, lot 2, was occupied by the plaintiffs (Starrs) in October, 1850, and has continued to be occupied by them till the commencement of this suit, for purposes of trade or manufacturing of tin-ware." (*Ib.*, p. 42.)

In support of this finding, see the testimony of Hallock,

pp. 69, 70; Parrish, p. 100; King, p. 93; Norris, p. 179, ans. 13.

Eighth finding: "That the other portions of the premises in dispute have been occupied by, and in the actual possession of, the plaintiffs (Starrs) and their granters, claiming adversely to the defendant (Stark) since some time in the former part of 1850." (*Ib.*, p. 42.)

In support of this finding, see also, in addition to the above, the testimony of Dewilt, p. 47, ans. 13; Coffin, pp. 55, 56, 57, 58; Caldwell, p. 67, ans. 13, 14.

Ninth finding: "That the plaintiffs (Starrs) were in possession of all they claim in the complaint, on the 7th of December, 1860." (*Ib.*, p. 42.)

In support of this finding, in addition to the foregoing testimony, see Stark's admission of their possession in his answer. (*Ib.*, p. 31.)

Tenth finding: "*As conclusions of law.* That no settlement or cultivation by the defendant (Stark) was made or commenced, as required by the act of 27th September, 1850, prior to September or October, 1850; and said Stark, at the date of his patent certificate, had not complied with the requirements of the donation act, and the patent issued to him on the 8th December, a copy of which is annexed to the bill, is void as against the plaintiffs, and should be set aside."

Eleventh finding: "That no appropriation of the land claimed by the defendant, so far as the evidence in this case shows, had been made prior to February, 1858, when the city entered the tract covered by their patent; and the entry by the city authorities and the patent issued to the city of Portland is valid."

Twelfth finding: "That the plaintiffs are entitled to a perpetual injunction restraining the defendant from putting plaintiffs out of possession, and from commencing any suit to eject or turn out the plaintiffs from the premises described in the complaint, or any part of the same." (*Ib.*, p. 42.)

The evidence in the case, including that of his own witnesses, shows conclusively that the *defendant had no residence on the Stark tract until* 1852, and that STRICTLY he had *no residence* of HIS OWN upon the Stark tract *until after his mar-*

riage in 1854, when Capt. Moulthrop, his father-in-law, presented a house to his wife. Without referring to the testimony in detail, it may be well to call attention to ONE OR TWO LEADING FEATURES pervading the mass of the evidence on the part of *the defendant, upon whom, by the pleadings, the burden is thrown of showing residence* and cultivation from the 1st September, 1849, to 10th September, 1853.

It appears that the town of Portland, in 1849, was upon a tract of 640 acres, and that the town was *mainly upon that part not now claimed by the defendant.* So that, when the defendant's witnesses declare *Portland* to have been *the home*, and sometimes the *residence*, in cross-examination, invariably they either show him to only *claim* a home *at* PORTLAND, without *special* residence, or to have *temporarily resided upon* THE SOUTH PART *of the tract, while he* NOW *claims the* NORTH PART.

It also appears, as a leading feature *in defendant's evidence*, that when his witnesses are required to point out *his particular place of residence, the house*, and to whom it belonged, *he never owned a dwelling* UNTIL 1853 or 1854, but was a *mere transient boarder.* (See testimony of Lovejoy, Record, p. 76; Hawey, *ib.* p. 79; Buch, pp. 80, 81; Herman S. Buch, pp. 82, 83, 84; Bennett, pp. 133, 134; Couch, pp. 142, 143; Stephens, p. 144, answer 8, p. 146; Ogden, p. 147, answer 7, pp. 148, 149; Holman, p. 150, answer 3; Stephens, p. 151; Deady, p. 155.)

It almost uniformly appears, on the cross-examination of defendant's witnesses, that *they explain away their former statements of defendant's residence.* This is particularly applicable to those witnesses by whom the defendant made his proof before the surveyor-general of Oregon.

On the contrary, THE PLAINTIFF'S TESTIMONY shows that he was in Portland in the fall of 1849 for a short time, but doing business in San Francisco, and so continuing until 1851. (See testimony of Hamilton, pp. 158, 159; Risley, p. 160; Wilcox, pp. 161, 163; Walling, p. 163; Doland, pp. 165, 166; Wait, p. 171; Holmes, p. 174, answer 16; Norris, pp. 177, 178.)

From his contract with Lounsdale, in March, 1850, (p. 17;) his power of attorney to Sherman, January, 1850; Sherman transacting his business under that power in Portland in 1850, 1851, (p. 121;) Sherman's sale of the whole tract to Griffin in November, 1850, and *buying it back* in March, 1851, (pp. 123, 124;) and sales during that year, (pp. 125–127,) is

conclusive against Stark's *residence* EVEN IN PORTLAND, saying nothing of *that particular tract*, UNTIL 1852.

It thus clearly appears that during *two years* of the four for which Stark's certificate claims residence for him on the Stark tract he *resided in California* and elsewhere. This fact certainly invalidates his certificate, and lets his patent fall. In that event the patent to the city becomes valid for the use and benefit of the plaintiffs as occupants of the lots in controversy, free and discharged from the reservation made in behalf of the Stark patent; and, consequently, the judgment of the supreme court of Oregon must be affirmed, for the reasons before stated.

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Council of Copaken